UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.4/1985/19
8 February 1985

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-first session
4 February-15 March 1985
Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Guatemala prepared by the Special Rapporteur, Viscount Colville of Culross, in accordance with paragraph 14 of Commission on Human Rights resolution 1984/53 of 14 March 1984

GE.85-10618

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I. INTRODUCTION

1. The situation of human rights in Guatemala was considered by the Commission on Human Rights at its thirty-fifth, thirty-sixth and thirty-seventh sessions, when it adopted decision 12 (XXXV) and resolutions 32 (XXXVI) and 33 (XXXVII) respectively. By this last resolution, the Commission requested the Secretary-General to establish direct contacts with the Government of Guatemala and to present a report of these contacts to the General Assembly. The General Assembly took note of the report (A/36/705) and by its decision 36/435 requested the Government of Guatemala to co-operate further with the Secretary-General in his efforts to establish these contacts.

2. At its thirty-eighth session, in February 1982, the Commission had before it the information collected on the situation in Guatemala contained in document E/CN.4/1501 and adopted resolution 1982/31. Pursuant to this resolution the Chairman of the Commission was requested to appoint, after consultations with the Bureau, a Special Rapporteur to make a thorough study of the human rights situation in that country to be presented to the Commission at its thirty-ninth session.

3. At its thirty-seventh session, the General Assembly in its resolution 37/184 of 17 December 1982 invited the Government of Guatemala and other parties concerned to co-operate with the Special Rapporteur and requested the Commission on Human Rights to study carefully the report of its Special Rapporteur and to consider, in the light of the report, further steps for securing the human rights and fundamental freedoms in Guatemala.

4. At its thirty-ninth session, in February 1983, the Commission on Human Rights expressed its disappointment that a Special Rapporteur of the Commission had not been in a position to make a thorough study of the human rights situation in Guatemala and requested once again that the Chairman appoint with the shortest possible delay, after consultation with the Bureau, a Special Rapporteur of the Commission and also requested that the Special Rapporteur present an interim report to the General Assembly at its thirty-eighth session and a final report to the Commission at its fortieth session.

5. Following consultations with the Bureau, the Chairman of the thirty-ninth session of the Commission decided to appoint Viscount Colville of Culross, QC, of the United Kingdom of Great Britain and Northern Ireland, as Special Rapporteur, under the resolution mentioned in paragraph 4 above, who expressed his readiness to serve in such a capacity.

6. Pursuant to paragraph 9 of resolution 1983/37, an interim report and a final report were presented by the Special Rapporteur at the thirty-eighth session of the General Assembly and at the fortieth session of the Commission on Human Rights respectively. In this connection the General Assembly adopted resolution 38/100 and the Commission on Human Rights resolution 1984/53.

7. The mandate of the Special Rapporteur was thus renewed by the Commission's resolution 1984/53; this was confirmed by decision 1984/137 of the Economic and Social Council. The resolution of the Commission was based, at least in part, on the recommendations contained in the previous report and the extent to which those recommendations have been fulfilled is reported here. The resolution is also important in clearly laying down the terms of reference of the Special Rapporteur's mission. Paragraph 14 requests the Special Rapporteur to report on "the subsequent developments of the situation of human rights in Guatemala taking into account developments in regard to the recommendations in his report as well as information from other reliable sources". Those other sources have

included a daily newspaper that has been fairly regularly received in Geneva, and a mass of other publications containing news and views from many people. The Special Rapporteur received announcements from the Government, from the Guatemalan National Revolutionary Union (URNG) (the over-all guerrilla grouping) and its component parts; from non-governmental organizations and individuals in many countries, and two regular collections of news items published in Mexico and Managua. As will be seen the Special Rapporteur attempted to investigate some of the items of information so presented to see if they were reliable. The Commission's resolution also requested the Special Rapporteur to submit an interim report to the General Assembly and a final report to the Commission. At its thirty-ninth session the General Assembly took note of the interim report submitted by the Special Rapporteur (A/39/635) and adopted resolution 39/120, the text of which is reproduced in annex I.

8. The resolution's paragraph is also of assistance in indicating the extent of the report, as well as the methodology. Both aspects were extensively criticized last year; however, it is impossible to interpret this paragraph as requiring some over-all evaluation of statistics, such as of people killed or of disappearances over the last six or seven years. The Special Rapporteur hopes that he is correct in having confined this report to events in 1984.

9. The recommendations covered positive aspects of the human rights scene and instances of human rights violations. On the positive side rural development co-ordinated by the National Reconstruction Committee (CRN) has continued to proceed; land titles continue to be granted with an advance towards enabling some country people to rise above minimal subsistence farming. Technical instruction, educational and health facilities, and infrastructure such as roads and water supply are being provided in further places.

10. The first stage of the electoral process has occurred, leading to the installation on 1 August 1984 of a Constituent Assembly with limited powers to prepare a new Constitution, the next stage of electoral law and measures to provide judicial protection of basic human rights. The Supreme Electoral Tribunal carried out its duties with skill and impartiality. Parties of the centre and right participated.

11. There continue to be apparent numerous examples of violations of human rights in individual cases, notably murders, disappearances and woundings; information is not available to the Special Rapporteur as to how many of these have been cleared up, but very many have not. An attempt was made to set up an organization, called the Commission for Peace, that might have played a useful part in helping to resolve the allegations, but it has so far completely failed to function.

12. Those convicted by the Special Tribunals (Tribunales de Fuero Especial) who were still serving their sentences have been pardoned and freed.

13. Freedom of speech and publication does not seem to suffer from any appreciable infringement.

14. Trade union activities appear, on present information, to be extremely limited and their existence precarious.

15. Very many refugees remain in Mexico and are in the process of being moved away from the immediate vicinity of the border; a certain number have returned to Guatemala and are being resettled. Smaller numbers are to be found in Honduras and Belize who show little inclination to return. Internal refugees -

displaced persons - continue to come out of hiding and are being resettled. Amnesties have been continued and are still current; about 8,000 persons have taken advantage of them since they were started.

16. The order in which these matters are considered herein does not indicate any ranking in order of importance. Each one concerns a fundamental human right or more than one and requires to be considered with equal concern.

17. On the question of methodology, the Special Rapporteur had a long discussion with the Representación Unitaria de la Oposición Guatemalteca (R.U.O.G.) in December in New York. A full written exposition of the methodology which they consider correct was promised but has not arrived. From the discussion, however, a number of points emerged.

(a) Much emphasis is placed by them on the need to judge the present Military Government's activities against the background of its over-all counter-insurgency plan. This particularly applies to the development projects in the rural areas, the "development poles" (new settlements) and the civil patrol system. It is most unlikely that the Government would deny this interconnection - see the quotation at paragraph 121 below. The point was again made in January 1985 by one general that the poor country people, especially in the North and North West, must be given some hope of progress and tangible improvement of standard of life if they are not again to become disaffected. The new roads in the Ixil Triangle, Western Petén and through Ixcán to join up with the system in Northern Huehuetenango plainly do have a dual purpose: they greatly improve the army's ability to move quickly and effectively against guerrilla incursions, in areas where severe military confrontations are still fairly frequent. The Prensa Libre reported on 21 January 1985 that at the end of the previous week there had been a battle in the Ixil Triangle, at a hamlet called Sumal, Nebaj municipality, in which at least two guerrillas, one civil patrol member and two soldiers were killed: in fact nine people were probably killed. Other actions occurred in San Marcos and in two places in Eastern Petén. These roads, however, also have a valuable purpose for the civilian population. They provide a ready link with local municipal centres and in particular provide the opportunity to market the crops, some of them new, which the villagers are being helped to develop. Improved communications are an asset in any country, and the desire for road access has been mentioned to the Special Rapporteur in several isolated communities. The point is, therefore, accepted, but does not appear to damage the methodology of the contents of this report.

(b) The Opposition's next major point is that it is not for the Special Rapporteur to advise the Government (presumably through recommendations), nor to seek such steps as the freeing of those convicted by the Special Tribunals. Rather he should merely investigate the allegations and denunciations of human rights violations, specific and general, and to report on these. Any improvement in human rights, including an assessment of what may constitute an improvement, should also be reported. The Human Rights Centre should collect and make preliminary inquiries about every denunciation of a violation; a plan should then be made to investigate selected incidents. The latter part of this proposition is exactly in line with what has been done since the Special Rapporteur's mandate began. The Centre has limits on its resources and cannot inquire into all allegations, but selected incidents have indeed been investigated (see paragraphs 31-59). As for advice to the Government, however, there is a flaw in the Opposition's attitude. A Special Rapporteur is expected, in accordance with settled United Nations procedures, to offer in his report Conclusions and Recommendations. It is unavoidable that the latter should largely be addressed to the Government since they alone are normally in a position to implement them (if they so wish). In this respect, therefore, the Opposition's approach appears

to be misconceived. The United Nations Human Rights Commission consists of governmental representatives and reports commissioned by it are inevitably addressed to Governments of countries who are members of the United Nations Organization.

(c) The report is said to be lacking in statistics. This is true. The Opposition has offered statistics, with various base dates from 1978 to 1984, on subjects of great importance, such as the public deficit as a percentage of the GNP, the national distribution of income, illiteracy, the extent to which children have access to education, and the percentage of the population with access to toilet facilities and running water in their homes or reasonably available. These are, of course, important aspects in assessing the standing of living of any population. If the Commission wishes them to be included in the report (should there be another occasion) the Special Rapporteur would be happy to consult with other specialized United Nations agencies such as UNCTAD which has a wide range of such statistics. The other matter concerning statistics is much more difficult. It concerns estimates of the number of deaths, sequestrations and woundings which are to be attributed to the Security Forces. As is said elsewhere in this report there are a number of possible elements responsible for such crimes. Indeed, an incident can be seen from different points of view. At the end of November an army patrol in the area of Nebaj, Quiché, found a group of 55 country-people at a place called Xexacom. They were under the control of a unit of the EGP guerrillas, and had been abandoned by these. The Government says that they were "liberated". In another organization's publication they are said to have been "sequestrated". With such lack of common classification the Special Rapporteur prefers not to offer over-all statistics, but to deal with specific events.

18. The visits with the team took place from Sunday 12 August to Saturday 18 August 1984 in Guatemala (with one morning spent in Honduras), and continued thereafter until Friday 24 August in Mexico and Belize and from Sunday 20 January to Saturday 26 January 1985 again in Guatemala. The Guatemalan Government provided every facility and courtesy; the Special Rapporteur was able to travel freely in all parts of the country to the destinations of his choice. No obstacles were placed in the way, and he was enabled to talk to everyone he wished. The authorities in Belize, Honduras and Mexico co-operated in so far as possible in enabling him to visit refugees. Most sincere thanks are expressed to all of these, and for the patience and helpfulness of everyone interviewed.

19. This is an updated version of the preliminary report, and includes information supplied in relation to matters mentioned in that report as well as new material derived from the second visit in January 1985.

II. CIVIL AND POLITICAL RIGHTS

A. Civil rights

1. Right to life and personal integrity

(a) Violence

20. The commonest denunciation about abuses of human rights in Guatemala at present concerns the level of violence. This is not a question of massacres in rural areas. The cases concern individuals, singly or in small numbers. Many occur in the capital, but there are cases from numerous other parts of the country.

21. It is only possible to give examples. A non-governmental organization provided the Special Rapporteur with a list of incidents between 30 July and 18 August 1984; it arrived after he left Guatemala, so the authorities have not had an opportunity to comment. During that period 14 people are said to have been murdered, another 16 identified and 10 unidentified persons found dead and 28 wounded in various ways. One death and three woundings are additionally said to have occurred in La Granja Penal prison in Pavón. There were 30 people kidnapped or disappeared and five previously kidnapped found alive and released. The information gives all available details; there was one brutal sexual murder of a woman; one victim was a former policeman and another a member of a civil patrol (PAC). One unidentified body of a woman, in San Marcos, was dressed in olive-green uniform.

22. The daily newspaper El Gráfico carried a report of the press conference given by the Special Rapporteur on 18 August. It also reported some cases: a student was shot and wounded in the University of San Carlos, with suggestions of drug trafficking; four policemen were attacked in two incidents, one in the capital, another in the country; several PAC members were attacked and wounded in two places in the west of Guatemala; two men were arrested for raping two women and murdering a man aged 70; three women with automatic weapons held up a garage near the capital, stealing 200 quetzales, fuel and jewellery from a customer, the registration number of their vehicle is known. Municipal officials in Alta Verapaz were accused of defrauding their local council of 100,000 quetzales. On waste land in Escuintla there were found buried some human remains, in a place where other bodies had been found in 1981 and 1982. The body of a carpenter was found in a river in the capital. A police lieutenant was arrested for stealing a tool-kit; another shot a colleague in the lip as the result of a disagreement about his duties; a policeman died of self-inflicted gun-shot wounds; another was taken to hospital from the police station. Reports of floods and traffic accidents are omitted.

23. In fact the non-governmental organization's list needs additions. On 6 August two named patients were taken to hospital with wounds, having been found in the street. Another person was wounded next day. The press reported other incidents not included in the list. Indeed the newspapers have been full of such incidents for months; not only civilians are involved, but members of the police and armed forces as well. When people are found after being kidnapped, the judiciary do attempt to investigate the crime, but frequently the victims are unable to give the necessary information: they have usually been blindfolded, and the experience induces shock that prevails for a considerable time.

24. No statistics are available for recent months giving an official figure for the various crimes. It is therefore a matter of impression. Violent crimes of the sort described have certainly increased since the present Government took power. They were not a significant feature of the Ríos Montt regime, although they had been widespread before that. It is probable that those responsible come from the same sectors as those mentioned later in connection with disappearances; but there is little if any proof. Criminal violence occurs in many countries, if not all, to a greater or lesser degree. It is the Special Rapporteur's judgement that in Guatemala it is now a serious problem. Whether or not the authorities share responsibility for such incidents, the human rights of citizens are perceived as being in danger and there is much real suffering. It is a matter for proper concern. Part of the reason at least is set out in paragraphs 108-117 below.

25. The Constituent Assembly passed a resolution on 22 August, with the unanimous consent of the 85 deputies present, condemning the violence and those responsible.

(b) Individual violations of human rights

26. It must be admitted that the Special Rapporteur has not investigated every allegation of a violation of human rights: examples alone must suffice. The major prison near the capital, La Granja Penal, Pavón, has been the source of several allegations: murder of inmates either by each other, the prison authorities or the police; the discovery of people detailed in underground rooms in subhuman conditions. There is a complaint by family members that they cannot trace the Guatemalan crew members of a merchant ship that sailed for Costa Rica in January, although the remaining Mexican sailors are said to have returned home; rumours abound that the ship was seen in Nicaragua, the missing crew in Mexico. Mgr. Flores, bishop of Alta Verapaz, claims to possess evidence of a long-standing practice of surreptitious sterilization of women, particularly indigenous women, through drugs and food. There are many more cases that have been placed before the Special Rapporteur. The problem is this: a limited amount of time was available to the Special Rapporteur in Guatemala. He asked about events in Pavón and it was immediately clear that there was a major dispute about the facts. The affidavit concerning the ship is signed but there is neither date nor address, so the Special Rapporteur does not even know in which year the incident is said to have occurred; nor does his mandate stretch to Nicaragua or Mexico in search of missing persons. As for the sterilization, the matter was discussed briefly with the Archbishop of Guatemala who agreed that any investigation would be an enormous undertaking. In the Health Centre at Pulay (Quiché) the Special Rapporteur was informed that contraceptive advice and pills are available to women, but there is no question of compulsion.

27. In January the Special Rapporteur learned that there had been further trouble in the prisons. Eight inmates were killed and others wounded at Pavón in December in the course of what appears to have been a visit. Two inmates of the prison at Cantel, Quetzaltzengo were killed by other prisoners, apparently because of a disagreement over which television channel should be watched in the recreation room. On the subject of prisons, the Head of State has plans to improve the system. More land would be bought at Pavón to enable the prisoners to engage in farming (and sell their crops); classes for the illiterate would be introduced and also secondary education for those who had reached that stage. More activity of this sort should help to dispel boredom and idleness which tends to lead to trouble. (It is only fair to say that at Pavón there are already some workshops where prisoners may work at trades, such as carpentry and making enamelled jewellery.) Further than this five new prisons are planned, which would

provide flexibility for moving trouble-makers and dispersing gangs. These appear to the Special Rapporteur, with his own experience of a penal system, to be sound proposals.

28. These matters are mentioned to demonstrate the Special Rapporteur's awareness that they exist. It is however impossible to confirm or deny the allegations, and the Special Rapporteur considers it unlikely either that his mandate requires him to pursue every such case to a firm conclusion, or that the Guatemalan authorities would welcome wide-ranging inquiries by the United Nations Special Rapporteur. These are tasks for the police or government departments in any country.

29. Nevertheless, the Special Rapporteur asked to go to several places with the intention of trying to discover the truth about certain allegations that have been published. The authorities, and particularly the army, seemed to be entirely unaware why these places had been chosen. The publications received by the Special Rapporteur are evidently not available to them; he eventually let them take copies. This ignorance at least has the merit that nobody is likely to have colluded to deceive him. The disadvantage is that the General Assembly and the Commission on Human Rights are unlikely to hear any clarification of these allegations by the Guatemalan delegation, since domestic inquiries have simply not been directed to the issues so widely circulated abroad.

30. The result of inquiries into certain allegations, relating to places througout the departments of the Altiplano, are described below.

(i) Santiago Ixcán, Quiché

31. The allegations are that a massacre took place in El Quiche and that there were over 100 victims. "Everybody died, my whole family. The army surrounded us and fired on us with machine-guns. Many people died. All the houses were burned down, the soldiers burned them down", reported Marcela Velasquez, denouncing that over 100 people were massacred by the Guatemalan army on 15 February. Velasquez, one of 46 survivors who were able to reach Mexico and who is recovering in the hospital in Comitán (State of Chiapas) from bullet wounds suffered during the attack, stated: "I was shot in the leg while I was running to get my children, one 12 years old and the other seven months. But the soldiers shot the older one and I had to leave him there dead. I only brought the little one with me." Velasquez' story was confirmed by several Guatemalan peasants, also from Santiago Ixcán, who have recently settled in the Emiliano Centre at the Puerto Rican refugee camp in Chiapas.

32. These reports emerged in March 1984. It happens that the Special Rapporteur knew Santiago Ixcán, having visited it in the summer of 1983. Various villagers recognized him on his return in August 1984 to investigate this denunciation. His conclusion is that the allegation is totally untrue. The houses are as he saw and photographed them in 1983 and 1984. With about 70 of the population assembled he asked about events in February.

33. It is a remote place. The Special Rapporteur did not initially tell them why he had returned for a further visit, but he ascertained that nobody else had been to the village to make any inquiries.

34. There had indeed been an incident on 14 February. An outpost, manned by members of the civil patrol, had been attacked at night. The sentries withdrew under fire to the village and the attackers made off. In the morning the patrol revisited the scene and found spent ammunition of two calibres not used by the

army, some blood stains and an abandoned note stating "..., the sentry in this post, was killed here tonight". (The name would have been filled in if the attack had been successful.)

35. Nobody from the village was killed or wounded. Nobody is missing. They would like rather more protection. Certainly the meagre wire fence with broken gates that the Special Rapporteur photographed, and small wooden guard posts, offer little enough. No army unit is stationed there.

36. When the Special Rapporteur finally informed the population of the allegation that he had come to investigate they replied that it was a lie.

37. Lastly, the Special Rapporteur asked whether anyone knew a Marcela Velasquez, without suggesting that she was the informant. She is quite unknown in the village.

38. The current population at the time of the Special Rapporteur's visit was 410 men, women and children, and this includes a group of about 20 displaced persons recently discovered by a civil defence patrol and now in process of being settled in the village after two years in the mountains with the guerrillas, who abandoned them. The population is not entirely Ixil, there being members of Kekchi and other groups.

39. The United Representation of the Guatemalan Opposition (RUOG) has reacted strongly to this report on what happened at Santiago Ixcán. They point out that the community is a "parcelamiento" comprising the village and scattered houses in a substantial geographical area. The witness might have lived in an outlying settlement and the alleged massacre might have been retaliation for what happened to the outpost on 14 February.

40. The Special Rapporteur commented in December 1984 to RUOG that, in approaching Santiago Ixcán by air there is no sign of outlying settlements; and that the civil patrol covers a substantial area in its operations. RUOG were specifically invited to name or locate the outlying settlement where the alleged massacre occurred.

41. There has been no further information provided and the only possible conclusion at present must be that this event is fictitious.

(ii) El Tumbador, San Marcos

42. The allegation is that on 20 and 21 February 1984, in the villages of La Colonia, Morales and La Liberación, within the muncipality of El Tumbador, troops of the army caused the disappearance of at least 18 persons and executed four in the presence of the rest of the population.

43. The Special Rapporteur visited El Tumbador, a municipality that includes a number of coffee estates in the San Marcos highlands. La Colonia is in fact an estate, on which live the farm workers and their families. La Liberación is a village; Morales a hamlet. after a preliminary discussion in the municipal building with the mayor and others the Special Rapporteur went with them to Morales to seek evidence. This area is currently, and was in February, an active zone of operation for the group of guerrillas called Organización Revolucionaria del Pueblo en Armas (ORPA) and consequently also for the army.

44. The allegation has amalgamated and confused two separate events:

(a) "Four persons executed in public." This almost certainly relates to an incident in late 1983 when a guerrilla ambush was set up on a road to inflict casualties on an army patrol. The patrol discovered the threat and attacked the ambush. There were casualties, including six guerrillas. One of the tasks of a municipal mayor, as judge of the peace, is to make inquiries about and, if possible, identify dead persons in his area. He had the six bodies brought to the centre of El Tumbador and laid out. He says that his purpose was to seek identification but I dare say that there may have been an element of deterrence. The bodies were there for about an hour. The Special Rapporteur does not know if any were identified;

(b) There is no doubt that 18 persons did disappear from the places named, in the small hours of 21 February. The Special Rapporteur does not know whether the incident has otherwise been investigated in detail. It does, however, underline the point made in his previous report (E/CN.4/1984/30, 7 and 7.1) that it is not easy for a Special Rapporteur from the United Nations Commission on Human Rights to act as a detective in cases of this sort. The Special Rapporteur spent all afternoon in the process, abandoning a visit to another place in San Marcos whence a different incident had been reported. A full investigation would have required several days, with a person of judicial authority presiding and applying a suitable procedure. Although the villagers, families of the disappeared and persons from outside Morales itself assembled, they were not particularly communicative. The Special Rapporteur is reluctant to give details of what was said, since he hopes a full inquiry will take place. It must suffice to say that as a result of the answers to his various questions and deduction from the stated facts, the balance of probability is that it was not the army but the guerrillas who carried out the incident. No witness said anything explicitly implicating either side; the Special Rapporteur alone, and not they, is responsible for this provisional conclusion. He is most grateful for the co-operation received. However, of all the events that he tried to clarify in the course of three visits to Guatemala he considers this the one on which it would be the least satisfactory to draw facile conclusions.

45. A similar doubt surrounds another case that was not investigated, since the Special Rapporteur only heard about it while in Belize. It happened in a village in the municipality of Colpetén (El Petén) earlier this year. The guerrillas killed a man, and the army came and surrounded the village. When some of the villagers went into the countryside to recover the body, the guerrillas suddenly appeared, and said that if they did not kill the villagers the army would do so. When the army left they took with them a man and a woman, and the village authorities could find out nothing about them from the army detachment. The army then withdrew the civil patrol, to see what the guerrillas would do. Three days later eight of the people who had gone to recover the original victim were kidnapped in the middle of the night.

46. It would be enormously difficult to establish what happened and who was responsible. Nor is it surprising that the person who told the Special Rapporteur the story, having returned from Belize to Colpetén after two years as a refugee, went back to Belize.

(iii) <u>San Ildefonso Ixtáhuacán, Huehuetenango</u>

47. A non-governmental organization says: "Between 21 and 24 December 87 men were kidnapped (in the municipality). Out of these 60 were released at the beginning of January. Nothing at all is known about the others. The greater part of the 60

were severely tortured to such extent that some are lying seriously ill in hospitals of Huehuetenango. They gave them electric shocks. The kidnappers were dressed in civilian clothes but they took their victims to a barracks where they tortured them."

48. This relates to a well-known incident. At the end of 1983 the security forces obtained information which indicated that certain people in the municipality of Ixtahuacán were implicated in a subversive, but non-violent organization. These men were arrested and taken for interrogation to the army base in Huehuetenango City. They were held for 15 days, and then taken back to Ixtahuacán. They made a final trip to the city to sign their amnesty papers, and on 10 January 1984 there was a public ceremony at the municipal centre when the benefit of the amnesty for all of them was announced to the assembled population.

49. The Special Rapporteur put together this information from what he was told by the commander of the military zone in Huehuetenango City, the commander of the civil patrol in San Ildefonso Ixtahuacán and another local inhabitant; and from four out of five of the men concerned who live in the village of Granadillo (the fifth was away working on an estate in the south). There had never been more than 62 men arrested and they had all been released in the same way. Ixtahuacán is a large municipality, and the 62 lived in various villages or hamlets; the Special Rapporteur chose Granadillo as the place to visit.

50. The four men told the Special Rapporteur that the bell had been rung to gather together the population. The place was full of officers and a masked man picked out the five. They were tied up. One of them, who arrived first to talk to the Special Rapporteur, said he was pushed by a soldier, taken home and asked where the arms were hidden. He said there were none. His wife then arrived, a noose was put round her and she was suspended in the air. He thought she was dead, but she was not: it was play-acting. She was untied. They searched the house and found no arms. Then, with the other four, he was taken to the army base. There they were locked up, and in the course of interrogation were punched around the body, and one of them was kicked when he fell over. They had bruises. The Special Rapporteur made a particular point of asking in detail about these assaults and is convinced that at least those four men suffered nothing more.

51. All 62 were present at the amnesty ceremony. Thus the allegation that some were in hospital at the beginning of February is unlikely to be true. The four men told the Special Rapporteur that they had had no trouble since then.

(iv) Cantel, Quetzaltenango

52. A substantial article about this municipality was published by a non-governmental organization earlier in June 1984 under the heading "Cantel: a Guatemalan settlement subject to siege by the army". There follows a long description of the situation in the municipality, painting a picture of poor facilities. The army's siege is said to have begun with the refusal of the local population to form a civil patrol, despite three attempts by the army to coerce the inhabitants. This refusal is then said to have been followed by reprisals, directly or indirectly connected with the position adopted by the population. Extrajudicial executions are alleged, and the names of eight persons are given with the implication that their deaths are a result of the local opposition to forming a civil patrol. Two others are said to have disappeared and many more to have received death threats. Tension is said to be high, with fears of a scorched-earth

campaign and massacres on a grand scale. The Special Rapporteur hopes he does justice in so summarizing three pages issued by the Commission of Human Rights of Guatemala. Their summary says that the army had executed extrajudicially the majority of the leaders of the community.

53. This matter has been reported to the Special Rapporteur on Summary Executions, Mr. Amos Wako, who entrusted the Special Rapporteur with its investigation.

54. The murders in question involve three families, called Morales, Ordoñez and Sacalxot. The Special Rapporteur agrees with certain of the background information provided by the Commission of Human Rights of Guatemala. The municipality is fairly large, close to Quetzaltenango City, and prolific in agricultural production. In the outlying hamlets the crops appeared very fine and diverse. The Special Rapporteur did not investigate the health centres, but as to education it can be said that in the hamlet where the Morales family live there is a school where the children are taught, in Spanish. There is certainly a school in the centre.

55. It is perfectly true that there is no civil patrol in Cantel. People are involved in agriculture, and the Special Rapporteur was told that many work in the local textile factory. He was informed by the mayor that they do not wish their work to be interrupted by service in the civil patrol: at least they are still considering the matter. However, such concern as there was centred on the murders and a few tortured corpses of unidentified people that the mayor said had been dumped in Cantel by unknown persons.

56. The Morales and Ordoñez murders were well-known; both families were prominent in the municipality. They were said by the mayor still to be very upset, but he dispatched the Special Rapporteur with the deputy mayor to see what they could find out. As they drove he saw the Ordoñez widows walking along the road. They were prepared to talk. David Ordoñez Copop's widow said that in March 1984, while she was asleep, people broke into the house, took her husband away and killed him: he had been a mayor of Cantel. Those responsible were ladinos, not from the village. There had been a problem over property, and a feud. Another woman, a member of her family, said that two of her brothers-in-law and her father-in-law had also been murdered. Unfortunately the Special Rapporteur did not ask if any of their names was Sacalxot. This account was in complete accordance with what the mayor had earlier said, that there was a family feud and four people had been killed.

57. The Morales family happened to be gathered in their village because of the death of one of their relatives in childbirth the day before. The two brothers who were killed included another former mayor, and had been owners of a radio station in Quetzaltenango City. An employee was dismissed and sued the firm in the civil courts; he lost. Threatening letters then started to arrive and one day in mid-1983 the brothers left in their car at 6.30 a.m. The car with their bodies inside was found burnt out within the municipality. Despite this the threats continued, and the Special Rapporteur has a photocpy of a crude blackmail letter sent to one of the Morales family at their address in Canton Xecan, Cantel, postmarked 10 August 1984, Quetzaltenango, and demanding large sums of money with menaces: the police had the original and gave the family two photocopies.

58. Neither the families nor the mayor considered that these murders were in any way connected with security forces, nor the question of the civil patrol. Both cases were in the hands of the police.

59. Finally, there seemed to be no state of tension or fear in the municipality. The arrival of the Special Rapporteur and his party in the centre, in two cars, among the market stalls, aroused no interest whatever. There was no difficulty in speaking to the bereaved families. The mayor said Cantel is a very peaceful place.

(v) San Pedro Carchá, Alta Verapaz

60. A non-governmental organization has reported as follows: "In San Pedro Carchá, the 'model village' that has been implanted there is in reality an experimentation camp where, with specialized psychoanalysis methods, they are trying to brainwash the peasants, superimposing on their clear vision of the reality all the ideology of domination that this unjust system legalizes."

61. San Pedro Carchá is a small town about 3 kilometres east of Cobán, the capital of Alta Verapaz department, to which it is linked by a good road. The Special Rapporteur flew over the town and could see no trace of a "model village"; the layout and buildings of these villages are instantly recognizable. In Cobán it was confirmed that no model village had been implanted at San Pedro, nor were any troops stationed there. The only feature of significance is an army school for cadets, in their early teens. The students are not required subsequently to join the army if they do not wish, though many do so.

62. There is, however, to the south of Cobán, at about the same distance, a new village under construction at a place called Acamal. Perhaps the allegations refer to this. The Special Rapporteur visited it, and comments appear in paragraphs 206-212.

(vi) Rabinal, Baja Varapaz

63. One NGO has published the transcript of a tape-recording of evidence on model villages. They mention one at Rabinal, which is said to have only one entrance, to be surrounded by barbed wire, controlled by military personnel in civilian clothes. It is a permanent settlement.

64. This can only be a reference to the village of Panchuj, which stands about 1½ km. from the town. It was built by INDE, the national electricity supply board, for the inhabitants of Rio Negro, a village flooded by the dam which is part of the Chixoy hydro-electric scheme. The whole population was moved and have new houses, which they say they prefer to their former wood-and-thatch huts. The separate kitchen is another advantage. There is electricity and running water in every house. There is land for all, and a pond for breeding fish. Cash crops include beans, tomatoes and peanuts. There are numerous entries to the village, though it is surrounded by barbed wire (very loose on its posts) which keep cattle from getting into the gardens and, internally, separates the plots. There is no surveillance, but the community has its own civil patrol, 120 in strength. The school provides bilingual education in Spanish and Cakchiquel.

65. The inhabitants' only complaint was the lack of animals (or, better, a tractor) to plough their land which is level and does not need hand cultivation.

66. The Special Rapporteur could detect no violation of human rights in connection with this village.

(c) Disappearances

67. This phenomenon has been a feature of the situation in Guatemala for years. Evidence is beginning to emerge. The allegations, from various sources, indicate four broad groups as being responsible: the security forces; the guerrillas; common criminals; and some types of private organizations consisting of police and military when off duty and/or right-wing political groups. The Special Rapporteur has, through a misunderstanding, been reported in the Press as having said in January 1985 that disappearances are a thing of the past. Unfortunately, this is not true; disappearances continued throughout 1984.

68. The policy of cleansing the police force of its corrupt or criminal members has now disclosed that some police, and also some military personnel, have been invovled in criminal gangs. No statistics are available but it has certainly been discovered that certain policemen have been involved in kidnappings and other crimes. There is, therefore, substance in those allegations, although the extent of the problem is difficult to estimate. On this point see paragraphs 108-117 for more details.

(i) The security forces

69. The most cogent evidence that they have been invovled in the past occurs in connection with the former Special Tribunals. The standard practice was to detain a person arrested on a charge within the competence of those Tribunals and hold that person incommunicado until the requisite confession was signed. Naturally, so far as the family was concerned, that person had disappeared, and many were so reported. Many such detainees then turned up in the 2nd Police Corps Headquarters in the capital, where the Special Rapporteur interviewed some of them in 1983. Since this is well-known, and since the Government denies that anyone is in secret detention, the Special Rapporteur had made a specific request. In April 1983 the present Head of State, who was then Minister of Defence in the previous regime and, as such, in charge of the Special Tribunals, made a public statement that 458 persons had been arrested under that jurisdiction. On this visit the Special Rapporteur asked him, the Minister of Government (Interior) and the President of the Supreme Court if a list could be compiled to account for all these persons. They are said to fall into five categories: those who were released again after preliminary investigation; those who were transferred to the ordinary courts because their offences were not within the Tribunals' jurisdiction; those who were tried by the Tribunals and acquitted; those convicted by the Tribunals, all of whom should now be free, either having served their sentence or as a result of the pardon in July 1984 under Decree-Law 74-84; and those whose cases were pending at the time of the abolition of the Tribunals in August 1983, who were transferred to the ordinary criminal courts. The new Decree-Law instructs these courts to dismiss these cases. The information now available appears in paragraph 106.

70. The testimony of Juan de Dios Poyón Otzoy, who was convicted by the Special Tribunal but later freed, gives details of the period when he was held in secret detention and accords with evidence given to the Special Rapporteur directly by others who had been through a similar experience.

71. Another testimony, published by the Commission of Human Rigths of Guatamala, is that of Alvaro René Sosa Ramos, who was kidnapped in March 1984 and managed to escape into the Belgian Embassy and thence went abroad. In the opinion of the Special Rapporteur it is most probable that the security forces were responsible for his disappearance.

Secret Prisons

72. The Head of State has always firmly denied that there exist any secret prisons in Guatemala. However, rumours have persisted in recent years that people are held in clandestine prisons. To some extent this may or not have been true, since, as reported elsewhere, all those arrested for the purposes of the Special Tribunals were held for a period of interrogation in places which have never been identified, and there are other examples. Nevertheless, certain named military installations have been continuously mentioned. On the most recent visit the Special Rapporteur requested the Head of State for permission to visit some of these; this was granted and the Commanders were instructed to give access to any part of the buildings. Lists of the suspect military installations have been published by the CDHG, and the British Parliamentary Human Rights Group in November 1984.

73. There was insufficient time to go to the various military bases referred to outside the Capital. The Casa Crema in Zone 10 of Guatemala City has also been listed, but this is the official residence of the Minister of Defence and is currently the home of the Head of State and his family; it was thought inappropriate to seek the necessary free access to every room in their home.

74. Visits were therefore made to three military and one police establishment in the Capital, with the following results:

(a) The old Army Polytechnic School. This is a collection of buildings surrounded by a wall about 3 metres high, outside which lie public streets. A complete tour was made and all rooms examined except for those, like the garage, which are open fronted. The entire place is filled with miltiary personnel engaged in a variety of administrative activities, except for one range of buildings which was badly damaged in the 1976 earthquake and has never been repaired. There are no cellars. The Special Rapporteur considers that no prisoners are held there. Two high buildings, in commercial use, overlook the majority of the complex and this could make clandestine movement of people even more difficult.

(b) Matamorros Castle. This is basically a fortress, dating from about 1853. It is built on a hill consisting of solid rock, which can be seen even at the summit of the castle. There are no cellars or caves carved in it, since the whole outside circumference can be seen from the old wall or the ravine at the rear, and there was no sign at all of any trap-doors or other subterranean accesses in the rooms within the castle. Many of the rooms were padlocked, since they contain stores, but all were opened on request. The barracks and castle are a logistic centre and a headquarters for the military police. There are some prisoners, who are military personnel awaiting court-martial. A fairly primitive reception room is used as an appraisal centre for about 48 hours when a man is first arrested. Thereafter, those on serious charges or considered dangerous are moved to the Granja Penal de Pavón (the main security prison near the Capital). Other officers under arrest are housed in a small room near the old gate or in a barrack block. A few uncommissioned soldiers are kept in another rather primitive room just outside the old castle. The Special Rapporteur spoke to almost all the prisoners present on 21 January: one officer was out of the barracks playing in the football team, with his guard on the touch-line. The Court-Martial process is not speedy; but all either had or would be allocated (or could choose and pay for) civilian defence lawyers. Not surprisingly they did not appear very happy, but they all said they are well treated, and can be visited daily by their families and friends. One significant

feature is the fact that civilian relatives are allowed within the perimeter, with cars if they so wish. They even go into the main central castle. Outside the main castle are barrack blocks, transport workshops, and other miscellaneous buildings. Again a complete tour took place, any door was opened on request and it seems to the Special Rapporteur highly unlikely that he overlooked a secret dungeon. Loud conversations took place, throughout, in English; a secret prisoner might have heard and called out but no such thing occurred.

(c) The Military Base, Brigada Mariscal Zavala. This is a comparatively modern and spacious military compound of brigade strength dating from the early 1950's. The buildings are mainly single-story; there are barrack blocks, technical workshops, military vehicles and equipment, sports facilities and central kitchens and messing arrangements. All enclosed buildings (except ablution blocks) had plain glass windows without bars. There are no detention facilities and no underground accommodation except for two ammunition depots. After an extensive walk round the barracks, noting the perimeter and investigating unusual buildings such as the emergency electricity generating station, no place could be detected which could possibly contain clandestine prisoners.

75. The Special Rapporteur is well aware of the hazards of trying to find secret prisons. In this case notice had to be given of intruded visits, although the places visited were not identified more than 16 hours before the Special Rapporteur arrived on site. It is well known that prisoners can be taken away for the day, for instance in a bus; that piles of stores can hide a door into a cellar. It is this Special Rapporteur's opinion that in those three locations nothing of the kind had occurred.

76. Another place which has been mentioned as a possible place of secret detention is the Police Department of Technical Investigation (DIT). After his discussion with the National Police, the Special Rapporteur asked if he might visit a police station; any in the capital were available but the Chief of the Police offered a visit to DIT as well. This was the choice.

77. It is a modest building on two floors with no cellars. There is the normal range of facilities for interviewing members of the public wishing to report a crime; offices for preparing reports, for records of criminals and incidents, photography and fingerprinting and an armoury (from which weapons may only be taken by officers on assignments with special permission - a record is kept of all such occasions). The Special Rapporteur went into every room and there were neither secret prisoners nor any place where such persons could possibly be kept.

78. It is worth mentioning that DIT used some years ago to operate from a building in another part of the city which did include cells; but this has not been occupied for some time.

79. Further locations of suspected clandestine prisons were given to the Special Rapporteur during his January visit. In discussion with the Head of State, the latter suggested that on future occasions the Special Rapporteur should present himself at any such place with, preferably, less than one hour's notice in order that investigations may continue.

(ii) <u>The guerrillas</u>

80. On the recent visit the Special Rapporteur heard three pieces of evidence that confirm the Government's stated view that some of the disappearances are cases of people joining the guerrillas without the knowledge of their families. One

ex-guerrilla to whom the Special Rapporteur spoke in San Marcos said that he had been recruited by the guerrillas and taken to one of the coffee estates that had been occupied by the guerrillas (not an uncommon occurrence in recent years in San Marcos). His family reported him as a disappearance; eventually he obtained the benefit of the amnesty and is reintegrated into the community. In Petén the Special Rapporteur met another guerrilla, who had obtained a senior rank. He had been recruited in Escuintla and trained abroad. The guerrilla organization said they would inform his family that he had gone to work for an American company. When he, too, eventually took advantage of the amnesty he found that his family had advertised his disappearance in the newspapers, since the promised message had never been given. While abroad he had met, alive and well, a woman whose disappearance has been the subject of numerous denunciations.

81. The third example was another witness who had seen two persons, whose names are on the list of disappeared persons, among a group of guerrillas outside the borders of Guatemala.

(iii) Common criminals

82. The previous report quoted the case of the kidnapping of the editor of one of the national daily newspapers, who was only released on payment of a very large ransom. In early August this year the police issued a statement indicating that in the first six months of 1984 they had solved 97 cases of disappearances, throughout the country; 90 per cent were in fact kidnaps for ransom, and police action had prevented the payment of at least 2 million quetzales ($US 2 million). This success by the police has continued since August, and a number of much-publicized kidnappings have been cleared up, the perpetrators being arrested: an American business man from Antigua Guatemala, for whose release $45,000 was being demanded; a 14-year-old school girl from the capital for whom Q50,000 was demanded; three small children who had been missing for a year in San Juan Sacatepéquez, to select those of the most notorious cases covered by the Press. In yet another case the criminals were caught but they had already murdered their victim: in this last case an army officer was involved who is now due to be court martialled.

83. On the day that the Special Rapporteur arrived in Guatemala in August, the police announced that they had recovered 66 stolen vehicles, mainly in the capital. The registration number and location were published in the press. This may reflect vehicle thefts that occur in many countries; it does however support the police's claim that, even when the vehicle can be identified, this seldom helps them to apprehened those responsible for violence in the streets. Similar lists of stolen cars are regularly published in the newspapers.

(d) The aftermath of disappearances

84. In common with families throughout the world who are confronted by the disappearance of one of their close relatives, Guatemalans have approached the Special Rapporteur personally and by correspondence. Their anguish and despair is all too familiar to him with his background of membership of the Working Group on this subject. Similarly, certain non-governmental organizations have placed lists of cases before him. In August, 126 families presented a petition to him, and he met them again in the cathedral with the Archbishop. He has received particular requests in relation to the staff of the University of San Carlos, the Association of University Students and the trade union movement, pointing out the numbers of their respective membership among cases of disappearances in recent months.

85. Cars are used in most cases of disappearances. The Special Rapporteur accepts that, when a licence number is observed by a witness, as sometimes is reported, the car may well have been stolen, as the Minister of the Government pointed out. However, vehicles are said to be involved that display no plates; moreover, there are now emerging cases of people who have been freed or have escaped, and can tell of their experiences while in detention and who were their companions. There are witnesses to kidnappings who are prepared to say that they recognize members of the group concerned in the operation.

86. The Special Rapporteur could not, as the families requested, stay in Guatemala until their relatives were found. Nor does his mandate, in paragraph 14 of the Commission's resolution, require him to deal with events prior to the renewal of the mandate. Nevertheless, the Working Group on Enforced or Involuntary Disappearances has made many requests to the Guatemalan Government for information about older cases, and these have all been examined for admissibility and transmitted under that separate series of resolutions.

87. It is the position of the Government that there are no persons in secret detention and that kidnappings and disappearances are the responsibility of the guerrillas and criminals. Thus it would seem a matter of high priority to be seen to be investigating the evidence now emerging about the circumstances of these events. To some extent this may be beginning; but criticism cannot be expected to cease as long as these clues are not followed up. The international community does not have to be informed about routine police procedures. The press will report the results and these will be noted outside Guatemala by all those interested. What seems to be needed is a demonstrable concern to clarify and solve these cases, as a matter of policy, and to publish the results, duly processed in accordance with law. The Head of State told the Special Rapporteur that the police are arresting people in connection with disappearances, but there remain defects in the judicial system for dealing with the cases. The President of the Supreme Court said that he is trying to deal with these defects in a practical way. The outcome must be of great interest.

88. Action about disappearances is at last being taken. The Mutual Support Group of the families of the disappeared have been increasingly active and vocal. This is the first grass-roots organization, concerned with human rights, to have emerged in Guatemala for years. It has not been persecuted by the authorities. Indeed, following a substantial demonstration by some of its members in the gallery of the Assembly, arrangements were made for some of the families personally to present their cases to the Special Rapporteur in the entrance hall of the Assembly building. There were numerous placards, some explaining that the number of families involved, who have lost at least one relative, is 355. The details of the disappearances tend, as is normal, to lack the detail

of information which would facilitate investigation. There are many accusations that those responsible were members of the DIT police department. In certain cases, however, extremely specific information is available. There are numerous allegations of cases of disappearances in 1984; whoever may have been responsible, there is no doubt that the families have established that these cases indeed occurred.

89. The Group obtained an audience with the Head of State. As a result a new tri-partite body was set up to investigate the cases of disappearances, including those which date back to the beginning of the decade. The members are the Attorney-General, the Minister of the Interior (Gabernación) and the Vice-Minister of Defence: the two latter ministries are represented in fact by senior officials below ministerial status. The Special Rapporteur met this Commission, and was told that 15 meetings had already been held. The inquiries are being made on a national basis, involving the army in each Department, the civil organization based on the municipalities and the judiciary.

90. There are, so far, no results. The Commission says that it is dealing with 248 missing persons but the Mutual Support Group, at a separate meeting, indicated that more cases than this were involved. It is clear that proper legal procedures, for example in connection with exhumations for the purpose of identifying a body, must be observed. However, there is now certain expertise in other parts of the world which has led to considerable clarification of disappearances. The Special Rapporteur made certain suggestions to the Commission about possible lines of inquiry. If there is any lack of communication, as to details, between the families and the Commission, the Special Rapporteur now has in his possession material which ought to facilitate the Commission's task; and it will transmit it to them. Although in most cases the details are, as is normal, very sparse, in some instances there are pieces of evidence which should assist in that particular case, and could lead the way to further clarifications.

2. Right to personal liberty

(a) The rule of law

91. One point that the Constituent Assembly will undoubtedly consider carefully as they draft the Constitution is the independence of the judiciary. The Special Rapporteur previously reported the assertion of the President of the Supreme Court that he had the most independent court in the country's history, assured by the Fundamental Law of Government. However, in May 1984 he was removed from office by the Government. The reasons given in public by him differ from what is said by ministers, and the Special Rapporteur is not able to explain the inconsistency. It probably matters much less than the fact that he could be so removed at all. Ten judges or alternates of the Court and another ten officials resigned as a result. The College of Advocates was very critical of this event. It has organized a series of working parties on constitutional issues, such as independence of the judiciary, the results of which may be useful to the Assembly.

92. His successor, Dr. Tomás Baudilio Navarro, was already a judge of the Supreme Court, in the criminal divisions. He said that he had been visiting all the departments in order to speed up the hearing of cases and generally make the judicial system more efficient. There appears to be a need for this: one lady brought to the Special Rapporteur papers concerning a civil action that was started in 1975 and is still unresolved; the President promised to look into the matter. The head of State also confirmed that improvements are needed: people are arrested in connection with disappearances but the judges dealing with the cases are sometimes junior, inexperienced, afraid and underpaid.

93. Recently there has been a total of 719 applications for habeas corpus. These were distributed among the judges, and pursued even if there may have been some technical defects. The judges certainly, according to the press, went out and searched in the prisons and police stations, but with very little success. Two persons in Quiché and another in Suchitepequez were found illegally detained and released. In one case the person responsible was prosecuted and convicted.

94. The President made the point, also mentioned by ministers, that families complain, naturally, of a disappearance; they do not always tell the courts or the press if the person reappears. However, since it is impossible to put a figure on this, the Special Rapporteur cannot say to what extent this reduces the number of outstanding cases.

95. The reports of the Supreme Court's decisions have now been published up to the end of 1982.

96. In the Preliminary Report mention was made of a statement made in early 1984 by a spokesman of the National Police that over 100 persons had been held in police custody, some of them for over a year, without being presented to the courts in accordance with the Code of Criminal Law. The College of Advocates took the matter up publicly, and the Government ordered a full investigation. All the relevant papers have now been given to the Special Rapporteur and it is evident that a major misunderstanding has occurred. This is accepted by the current President of the College of Advocates.

97. The list in fact contains 84 names. They are persons for whom warrants of arrest had been issued by various courts (which are specified) between 2 March 1983 and 2 February 1984. The alleged crimes are of every degree of seriousness. The list was published by the police with the intention that it should be known that warrants had been issued against these people. One of them has been arrested. Others who recognized their names on the list reported to police stations and cleared up their situations so that they are no longer liable to arrest. Other cases do, however, remain subject to investigation.

98. The Special Rapporteur is satisfied that this apparently flagrant violation of human rights was the result of a failure in communication and has been satisfactorily explained.

99. Lastly, on this subject, the Special Rapporteur asked the President of the Supreme Court about the very large numbers of people who have, since about the beginning of 1984, been arrested by the police as suspects: had they been charged and brought before the courts, or been released? He could only say that there had been no complaints to the Supreme Court about that.

(i) Failure to bring accused persons before the courts

100. A family that includes three brothers from the south of the country told the Special Rapporteur that they bought some land in Petén, but the vendor refused to hand over the title deeds. Then there was a murder, and the vendor said the three brothers had done it. The dead man's widow made two statements, the first saying that it happened at night so that she knew nothing. Three days later she made another statement accusing the three brothers.

101. Five days later an army detachment from Petén came to arrest the brothers, one of whom is handicapped. One of the soldiers had only one eye, and the family recognized him: they had a cinema at La Pólvora in Petén and he was one of the soldiers who went to see the films. The family approached the authorities in the capital and at the garrison in Poptún, Petén, but a year later there is still no news of the men, nor have they been brought to trial. The brothers names are Pascacio, Feliberto and César Javier Garza.

102. The Special Rapporteur wishes the Guatemalan authorities to see this story in the present report, since they may have difficulties in interviewing the witnesses, who are in Belize. If it is as the family says, all that seems necessary is for proper criminal procedures to be followed and the brothers tried, convicted or acquitted. There appear to be no political aspects involved in the case at all.

(ii) The Special Tribunals (Tribunales de Fuero Especial)

103. Paragraph 4 of the Commission's resolution 1984/53 requested the Government to enable all persons convicted under the system of these Tribunals to be retried, under new legislation if necessary, in accordance with normal procedures. The Government has exceeded this request. It passed Decree-Law 74-84 on 18 July 1984 that granted an absolute pardon on the following day to all persons convicted and finally sentenced by the Tribunals, whether or not their

sentences had been considered under the principle of the application of the most benign law (whereby certain sentences had been reconsidered by the normal courts and reduced). Any accused persons whose cases had been started before the Tribunals but had been transferred to the normal criminal courts under the Decree-Law abolishing the Tribunals are to have their cases dismissed. The preamble to the Decree-Law pronounces that the reason for this legislation is a recognition of the criticism of the Tribunal's procedures as being in violation of due process of law.

104. These convicted people had been released by the time the Special Rapporteur arrived in Guatemala; he understands it happened immediately.

105. It may be confirmed that this was a political decision, in response to expressions of concern about violations of human rights, that should receive due recognition. It also demonstrates that, even in the present transitional period, the Government is able to take such measures, and may be persuaded to do more.

106. Recommendation (d) in paragraph 192 of the Preliminary Report suggested that the outcome of all cases falling within the jurisdiction of these Tribunals should be published. A complete list has now been provided to the Special Rapporteur. The full names of all the accused are given together with their alleged crime. There are 732 names, falling into the following categories (the figures in brackets are the number of women in each group):

(a)	Transferred to a named criminal court	405	(41)
(b)	Further proceedings stayed	187	(9)
(c)	Freed on sentence	30	(4)
(d)	Acquitted	3	
(e)	Non-custodial sentence	35	(1)
(f)	Custodial sentence	57	(8)
(g)	Executed	15	
		732	(63)

107. It follows that as a result of Decree-Law 74-84 everyone still in custody or on remand should have been released. The exceptions, of course, are Byron Roberto Luna Mendez, a convicted prisoner who was killed in Pavón prison on 18 February 1984; and the 15 who were executed in September 1982 or March 1983. In the case of the latter the Special Rapporteur suggested, in presenting these facts verbally to the Third Committee of the United Nations General Assembly in December, that the Government might, consistently with its treatment of the others concerned, consider making some ex gratia compensation in respect of those of the executed, at the least, who left dependent families.

(iii) The National Police

108. The Special Rapporteur spent a complete morning with the National Police in an attempt to elucidate the wave of violence on which so much comment has been made. There seemed in January to be rather less in the Press about such incidents, but they are still occurring. The press are likely to be well informed: they have an office in the Police Headquarters and it is police policy to keep the Press in touch with all police activities. Criminal records are publicly available.

109. One of the reasons given by the police for their close liaison with the Press is the need to establish the extent to which they do, in fact, solve cases of criminal activity. In 1984 an impressive number of offences led to an arrest, but there are no official statistics. The reason for this is that within six hours of an arrest the suspect must be handed over to the judicial system. They then take complete charge of the case, examining the evidence and deciding whether the necessary elements of the crime have been established and whether, on the available evidence, the accused person should stand trial. This must be accomplished within 20 days. All this occurs in private, and if the judge decides not to commit a person for trial he is not required to give any reason.

110. The police are extremely critical of the judicial system in criminal cases and it is evident that this criticism is widely shared. There are two main difficulties:

(a) The Procedural Code is heavily slanted in favour of the accused person. This Code was altered some years ago with precisely this intention; for example, a confession made to the police, freely and before witnesses, is not admissible evidence before the investigating judge. If a married couple are attacked in the street, neither can give evidence of the attack upon the other because the family relationship makes such evidence inadmissible altogether. The police in fact do not base their criticism on the content of this Code of Procedure; but it seems to the Special Rapporteur that technical advice and assistance might well be given to the new Congress about such procedural matters. Many countries operate a criminal procedure which is basically similar to that in Guatemala. No doubt it is highly desirable to prevent, for example, the admission in a trial of an alleged confession which has been extracted by threats or promises, but there are safeguards which have been devised which protect the innocent but still make it possible for the guilty to be convicted.

(b) The way in which the courts operate is the principal target for criticism. Potential witnesses are seen by the court officials who type out a statement. Few lawyers are available to assist prosecution witnesses to present their evidence to the official, but defence lawyers abound and appear to be able to produce weighty evidence indicating innocence. None of these witnesses are seen by the judge, nor is there any opportunity to cross-examine the evidence of either side. The judge merely reads the file when it is ready. The files are bulky; each case has to be disposed of within 20 days; there are not enough judges. As a result, about 98 per cent of all criminal cases are dismissed at this stage.

111. There are other ingredients in this matter which have led to a vicious circle. About the beginning of this decade some 80 judges and court officials were murdered; it is thought that many of those now in office are still afraid for their own and their families' safety. There is also a general reluctance on the part of the public to give evidence for the prosecution. Neither of these phenomena is surprising if 98 per cent of the accused persons are released, so that they are free to take reprisals if they wish.

112. The Special Rapporteur requested some examples of "criminal" records illustrating this criticism.

(a) A man of 26 had been arrested on 23 occasions between 1977 and the end of 1984 for seven offences of violence, 10 drug offences and five offences against public order. All accusations were dismissed at the initial stage without a trial.

(b) A man was arrested for two offences of robbery in 1983 and two relating to public order in 1984. All were dismissed.

(c) A man with a criminal history, going back to 1973, including robbery and drug-trafficking, was arrested in 1982 and 1984 for robbery, with menaces and carrying a firearm, and aggravated robbery. All accusations since 1974 have been dismissed at the initial stage.

The Special Rapporteur has a file of such examples.

113. Even more serious is the way in which this general situation has affected the police themselves. In 1983 a policy decision was taken by the Head of State that irregularities in the police force must be investigated and eradicated. The process took some time but in the course of 1984 no less than 450 members of the force were dismissed on a variety of grounds. It emerged that, either individually or in gangs, they had been engaged in murder, kidnapping, theft, and a whole range of other offences. Many of them were taken before the courts, but in no single case had the matter proceeded beyond the initial stage and all were released. The police speculate that they may now be engaging in similar activities in a private capacity.

114. The police have not solved some of the more notorious crimes, such as the murder of Deputy Santos Hernández or the two professors from the University of San Carlos. They say that they are not receiving co-operation from potential sources of information.

115. There is common agreement that poverty caused by unemployment is a common reason why people resort to crime, such as theft or kidnapping.

116. The Special Rapporteur would add two foot-notes to this passage. First, that the consistent failure by the ordinary criminal courts to convict wrong-doers was one of the reasons why the Ríos Montt Government set up the Tribunalas de Fuero Especial. This, however, is not an expression of support for that

system. Second, the military court-martial processes do not suffer from the defects of the civil courts. In Military Zone 1 (the capital) in 1984 there were 56 convictions for military or civil offences; penalties ranged from absolute discharge to 25 years' imprisonment.

117. The Special Rapporteur is not suggesting that these apparent defects in the court system provide a complete explanation for the violence in the streets and the countryside. It must, however, make a substantial contribution. It could well be that the absence of such violence during the Ríos Montt Government (or the latter part of it) owed something to the activities or the determent effects of the Tribunales de Fuero Especial. The lesson may be that a major improvement in the effectiveness of the ordinary criminal courts could have a similar deterrent effect against violence now. The President of the College of Advocates, who endorsed much of what the police said (the Special Rapporteur, in fact, spoke to him before the interview with the police), goes so far as to say that there is a lack of credibility in the judicial system, and the criminal knows that he is unlikely to be convicted. There is a need to pay judges better so as to attract a higher calibre of candidate and to organize a proper career structure for the judicial service. Some maximum sentences for crimes also need to be reviewed, upwards in the case of drug trafficking at least.

(iv) The Commission for Peace

118. This is a private initiative which was first started in early 1984, but went into a decline with the resignation of the Rector of the University of San Carlos and the Archbishop. Nevertheless it is still in existence, and the members currently include the Rector and two other persons from the University of San Carlos, the Ministers of the Interior and of Labour and representatives of the professions, the church, commerce, trade unions, the army and the Press, under the chairmanship of Lic. Vielmann, President of the College of Advocates. At present its activities are largely confined to an analysis of the reasons for trouble in Guatemala - violence, unemployment and misery - and, so far, it has only come to some general conclusions. The importance of the body, however, is its independence from government. It was not established by Decree-Law and it is a possible forerunner to a similar body which it is in the mind of the Assembly to create within the Constitution. This proposal has been outlined in the Press as involving the formation of a commission with extraordinary powers, to watch over human rights, with complete autonomy and powers to require the co-operation of the public and private sector, and the media, with a penalty for any obstruction.

119. Such a commission would amply fulfil the recommendation in paragraph 192 (j) of the preliminary report, and is reinforced at the end of the present document.

3. Freedom of movement and residence

120. The policy that has produced the poles of development, or model villages, mainly in the areas of conflict, is one of the most controversial aspects of current Guatemalan affairs. Its critics say that it constitutes a militarization of the countryside and its population, and a restriction of the freedom of movement.

121. Fortunately, an official of the army was quoted succinctly in the press in August (El Gráfico, 12 August 1984) explaining the policy: "These settlements that are being constructed are an attempt to advance the rehabilitation of the indigenous population affected by the conflict as much as a consolidation of military positions. The actions intended to consolidate the successes achieved by the army's fighting units are directed at improving every aspect of the indigenous area. At the moment bases are being established so that the indigenous communities that find themselves in areas of conflict can later develop and reinforce their productive activities. But in these development centres it is not only the army that is functioning, since the support of all Government agencies is needed. This is why the co-ordination arrangements were set up, for the cohesion of all sectors of Government."

122. It is not yet possible, in the opinion of the Special Rapporteur, to pass judgement on this major aspect of the Government's policy. The Archbishop made the right point; he does not object in principle to concentrating people in modern villages or co-operatives, but they must be allowed to do so out of free choice. Progress must be made to improve their standard of living. The other issue should be a matter for the Constituent Assembly as it drafts the Constitution. The machinery of co-ordination of government agencies is central to the distribution of power in Guatemala. It exists at all levels, but the most important are the national and departmental levels. Nationally the co-ordinating body is the National Reconstruction Committee (CRN). This has a strong civilian element, and non-governmental organizations, both national and foreign, are involved, some with over 20 years' experience. The Committee is responsible directly to the Head of State as such: perhaps in future it will be the President. However, at departmental level the comandante of the military detachment is the co-ordinator. These comandantes, with the Head of State and a few other very senior officers, constitute the supreme military council, which meets regularly in the capital. This can only mean that the army is in a dominating position on the ground, where the activity takes place. A return to civilian control in this respect could well be a central feature of the new Constitution. It is not for the United Nations to dictate, but hopefully the Assembly will consider this point very thoroughly, and also, if it is so decided, the army will genuinely hand over its powers. The Head of State told the Special Rapporteur that he does expect the army to relinquish this particular position. For further comments on such settlements, see paragraphs 189-218 below.

Civil Defence Patrols (Patrullas de Autodefensa Civil - PAC)

123. There is no consistent pattern throughout Guatemala as to the PACs. The Government's policy is firm, that the system will continue as long as there is a need to protect the civilian population from guerrilla incursions. In this role they seem to be remarkably successful. They have suffered casualties during attacks, but they continue to give physical and psychological protection to populations, not least in remote areas. The women in particular pay tribute to this.

124. There are still appearing in the press examples of pressure being applied by the army to men so that they join the civil patrol. An example can be quoted from July in Villa Nueva, in Guatemala department: an army spokesman is quoted, about three weeks later, as recognizing that there had been a certain reluctance, that the army did not wish to be troublesome to the population, but that there continue to be some who do not seem sufficiently aware of the need to

protect lives and property. The other source of pressure commonly comes from the man's own community; service in a patrol means a duty roster, including night-time activity; this inevitably disrupts a man's pattern of work. Then there is the element of danger. So anyone who does not bear his share of these burdens, especially in a small village, tends to be unpopular.

125. At the other end of the scale, service is now voluntary in some places. In Huehuetenango City, for example, the PAC consists of volunteers; it is in fact a development of the vigilante bands that the people set up after the earthquake to prevent looting and other crime. Similarly the comandante at Cobán in Alta Verapaz said that in that department service is not universal and in some places it is possible to select the personnel. The Special Rapporteur asked him about a point that has caused trouble elsewhere, that of a person whose normal work takes him away from his village part of the time (a problem particularly relevant to those who commute into the larger towns to work). In that department such a person would be able to apply for the necessary exemption.

126. In Huehuetenango, outside the city, the system is that all the men of the right age would belong. They elect the PAC commander and he then selects his "staff". The military commissioner has to be a member of the patrol, but cannot be the commander. The commander is a civilian but with an official part-time appointment to act as liaison between the community and the army. His main job used to be to enlist men into the army, by compulsion if necessary, but this system has been superseded by the PAC.

127. The PAC operate road blocks, especially, but not exclusively, at night. The number is reducing as hostilities decrease, but the Special Rapporteur went through two or three between Ixtahuacán and Huehuetenango City, a distance of about 40 kilometres.

128. It is possible now to update the previous report by a collection of facts from a number of the places that the Special Rapporteur visited.

129. Pulay, Quiché: 108 men form the patrol; their roster requires service once every six days and only in hours of darkness. They go to Río Azul, three kilometres away, to collect arms from the military detachment, and return them in the morning.

130. Sayaxché, west Petén: the PAC is 400 strong, each member being on duty every eight days for 24 hours. The member to whom the Special Rapporteur spoke said that this does not interfere too much with his work as a small farmer.

131. La Técnica, west Petén: the men were referring to villages from which they had come: there they had been on duty three days a week, which caused difficulties for their farming, especially as the women were afraid to go into the fields for fear of guerrilla activity. All men between 15 and 50 were members of the patrol.

132. Ciudad Melchor de Mencos, east Petén: information obtained in Belize suggests that in the municipality service is compulsory for men between 16 and 70. The army enforces this.

133. Paquix, Huehuetenango: the Special Rapporteur spoke to members of the PAC in Calvario, a village of 400 families working on a co-operative. The men are on duty one day in eight, and it does interfere with their work.

134. El Tumbador, San Marcos: originally there were 580 members, but now the service is voluntary and about 390 of the younger men are involved; they are on duty for 12 hours every week. One member, who worked for the municipality, said that he was paid for the day spent on duty. Most of the estates organize their own separate patrols, usually on four-hour shifts at night. Normally this is voluntary and paid for, but four estates do not pay the members.

135. Tzalbal, Quiché: There were in January 1985 140 members of the PAC who were on duty every sixth day. One member said that it interfered with his farming, but that it was necessary for security.

136. Salquil, Quiché: 220 men, between 18 and 49 years of age, constitute the PAC. They do a 24-hour shift every nine days.

137. Rabinal Municipality, Baja Varapaz. There are 32,000 members of the PAC who do a tour of duty at intervals of between 8 and 15 days, according to the population of the village or hamlet in which they live.

138. Cantel, Quetzaltzengo: There is no PAC at all (see also paragraphs 52-59). This is nothing unusual. There are many areas of the country, especially in the south-east, where the security situation is not such as to require the patrols. They also exist in only very limited areas of the capital.

139. There is thus no consistent pattern. Compulsory service is not coincidental with the areas of most active conflict. Some members find the duties arduous. It is a form of service in a quasi-military body, though when off duty the members are considered to be entirely civilian. It has been largely successful in keeping the peace in areas formerly rife with conflict. It also applies in areas where the guerrillas have never operated on a large scale, although incidents have occurred, as can happen anywhere in the country. It constitutes a restriction on members' freedoms and to some extent, through checks on roads, on freedom of movement. The advantages consist of the contribution to peace in which people can live and work. The Special Rapporteur rejects any sweeping condemnation of the system, especially in the light of compulsory military service that obtains, for a certain age group, in many nations. The question must be left in the balance as to whether the PAC as such constitutes an infringement of human rights in Guatemala. There are at present about 900,000 PAC members in the country. There exist nationally applicable rules about the exemptions from participation. Men and women under 18 or over 55 are exempt, unless they expressly volunteer, in writing and with witnesses. Other exemptions are for physical or mental incapacity; mayors and vice-mayors of municipalities or villages; chairmen of local interinstitutional co-ordinating organizations and others whom the departmental military commander decides to exempt; candidates for public office during the candidature only, unless they are elected in which case the exemption continues during their term of office; ministers of religion. There is, finally, a right to apply for exemption to the Departmental Military Commander (see paragraph 125). This is of universal application, and, in case of a refusal, there is an appeal to the office-in-charge of the PAC system at the national level.

140. The whole question of the PAC has been a substantial subject of discussion as part of the process of preparing the Constitution. A number of petitions have been presented to write the system into the Constitution. Others take the opposite view; they are apprehensive about so large an element of the civilian population being armed. It is still a matter which remains for decision.

141. Naturally, there continues to occur incidents which require disciplinary measures. One recent serious case has led to a number of members of a PAC being charged with criminal offences and brought before the ordinary criminal courts. A more common problem concerns drunkeness by a patrol member: this is usually dealt with by his detention for about two days in the local police-station cells.

B. Political rights

1. Right of assembly and freedom of association

(a) Elections

142. An election took place on 1 July 1984 as promised. The purpose was to elect a Constituent Assembly with limited powers whose mandate is to write a constitution for the country, to draw up a law for the judicial protection of certain basic human rights, by means of amparo or habeas corpus, and a law to govern elections for a President and Legislative Assembly will full powers. It is intended to hold the latter elections as soon as possible. The Head of State said that at this stage they should occur in June 1985. They would have the effect of a return in Guatemala to free democratic civilian government.

143. One fundamental objection, put forward to the July 1984 election, must be discussed. The Committee for Justice and Peace argues that the entire exercise was invalid since there existed no constitutional basis at all for holding any form of election. The previous Constitution had been abrogated and the Committee does not recognize the Fundamental Law of Government, passed by the Ríos Montt regime. The logic of the argument leads to the extreme position that there is no lawful means available whereby Guatemala can start again on the road to democracy. The international community may prefer the pragmatic approach. While noting the juridical defects, it may wish to encourage the current process to its fulfilment, as set out above.

144. The previous reports of the Special Rapporteur referred to the Supreme Electoral Tribunal. This body of distinguished lawyers was set up to organize the election and to adjudicate on any dispute concerning the results. They began with a major campaign to register the voters. Registration was compulsory for all literate civilians over the age of 18 and optional for the illiterate. Registration stations were opened all over the country amongst wide publicity. The process was completed by 10 May 1984. From a total adult population of about 3.7 million, 2,554,002 registered, of whom 1,590,421 were literate and 963,582 illiterate. Registration was achieved primarily by the production of the cédula de vecindad, the identity card carried by all citizens. These are issued by the municipalities and, as stated in the earlier report, where a person's cédula had been lost or stolen, a problem arose from the fact that a number of municipal buildings were burnt down during the height of the internal fighting and the records had burnt with them. This was solved in some cases, for instance in El Tumbador, San Marcos, by using microfilmed copies kept in the capital. Elsewhere it was necessary for a person to obtain a cédula by bringing witnesses who could reliably vouch for his identity.

145. The use of the cédula, which includes a photograph of the holder, appears to have averted impersonation and other electoral frauds almost entirely: only one such allegation was taken before the courts. At the same time as registering the voters, the Supreme Electoral Tribunal was also examining parties or political committees who wished to put forward candidates for the election. The criteria were strict. Ultimately 17 parties were provisionally approved to participate in the election, and a committee in each of the departments of Zacapa and Quetzaltenango and one in the capital. After the election the parties returned to their previous status pending final registration and are still lacking some legal requirements to be properly recognized. It has been said, probably rightly, that there was not a sufficiently broad political spectrum among the parties. The Social Democratic Party (PSD) did not participate; it did, however, spell out the

constitutional and political conditions that would allow it to take part in the future. The choice before the electorate therefore ranged from marginally to the left of centre to the extreme right wing.

146. Campaigning took place through meetings, the press - notably on behalf of the Unión de Centro Nacional (UCN) whose leader is also the owner of the newspaper El Gráfico - by radio and television. In view of the very limited powers available to the Assembly, the parties' policy statements seem to have been somewhat restricted; for instance the UCN put forward a programme concerned mainly with constitutional issues and the protection of a wide range of human rights. They did, however, broach the major issue of land ownership.

147. Prior to the election some gloomy prognostications were published relating to the likely outcome. An organization in Sweden drew attention to a large range of abuses and pressures that are said to have been used in the past in order to ensure the election of the army's chosen candidate, leading to widespread abstentions from the ballot. The organization was unhappy about the current climate of violence, and certain other incidents referred to below. The URNG (the group of subversive movements) also drew attention to the current violence and the history of previous elections, leading, they said, to a profound apathy, lack of confidence and revulsion among the population. They thought the elections to be a manoeuvre by the military regime for external consumption. Their assessment of the range of parties was that they were mainly right wing, with a couple in the moderate centre. They predicted manipulative propaganda by the military in order to sustain themselves in power.

148. There were certain matters in the period before the election which are properly the subject of criticism, for example:

(a) By far the most serious was the murder or disappearance of political leaders and activists. Parties of all political complexions have suffered;

(b) Much suspicion has been raised by the resignation of one full member (Lic. Búcaro Salavarría) and two alternates from the Supreme Electoral Tribunal. The members of the Tribunal themselves assured the Special Rapporteur that Lic. Búcaro resigned on health grounds, as he himself said at the time (May). The combination of the Tribunal's work with that of his own office proved too much. He was replaced by Lic. John Schwank, who was already an alternate member of the Supreme Electoral Tribunal;

(c) The Frente de Unidad Nacional (FUN) complained that soldiers had threatened and hit one of their candidates in Santa Rosa and kicked her companions;

(d) A printing press belonging to one of the parties was raided and pamphlets destroyed;

(e) A member of one non-governmental organization whom the Special Rapporteur met in Mexico City said that neither the political parties nor the Government gave adequate information to the electorate for them to understand what the election was to achieve. This appears to be fair comment, since the Supreme Electoral Tribunal told the Special Rapporteur that more education will be required before the next election;

(f) More suspicions were aroused by Decree-Law 40-84, which repealed the requirement for lists of the names of police and serving military personnel (who are not allowed to vote) to be circulated to the polling stations. The reason stated was to protect them from subsequent attack by subversives. In fact strict orders were given that they were not to vote and the Special Rapporteur has not received any indication that this order was disobeyed.

149. The Council of Hemispheric Affairs in New York issued a press statement saying that political sources in Guatemala had told of the intention by the Government to rig the elections, so that the right-wing coalition of the Movimiento de Liberación Nacional/Central Auténtica Nacionalista (MLN/CAN) would capture a majority of the seats, the UCN would have the next largest number and the Democracia Cristiana Guatemalteca (DCG) would come third. (The latter two are parties of the centre.)

150. Observers were invited from many countries. The Organization of American States (OAS) sent two official observers, but their report is not yet available. Colombia, Costa Rica, Ecuador, El Salvador, Honduras and Panama sent others, and there was a contingent of 24 from the United States of America and three from Canada. The voting took place on a single day, Sunday 1 July, but the observers seem to have covered the country quite thoroughly. Many travelled by road. The Government had provided aircraft and helicopters to reach more inaccessible places, but these were not much used. A number of observers brought their own, in which they indeed travelled widely.

151. The Supreme Electoral Tribunal had issued elaborate instructions, with illustrations, for the arrangement and functioning of the polling stations. The voting papers were made of watermarked paper, made outside Guatemala. Each voter had two papers, different in colour for the national list of parties and for the list of parties standing in the department in question. The parties each had a coloured symbol as well as their respective names. The voter had to put a cross, circle or other sign in the square containing the party of his choice. They were voting for 23 deputies on the national list and 65 on the district lists. The votes were then combined and, by a system of proportional representation, seats were won by the parties.

152. Some 1,998,434 people voted; 307,231 papers were spoiled and 133,102 left blank (15.5 and 7.5 per cent respectively). This compares with 261,012 on the national list and 325,614 on the district lists for the DCG, which party now leads the Assembly. It is of interest to compare the number of voters, as a percentage of the registered number, with previous elections:

	Registered voters	Percentage who voted
1945	310 000	95.5
1951	583 300	69.8
1958	736 400	66.8
1966	944 120	56.3
1970	1 190 449	53.8
1974	1 568 724	42.0
1978	1 785 764	36.5
1982	2 356 751 a/	45.8 a/
1984	2 554 002	78.2

a/ Not an official figure.

The seats were won as follows:

Movimiento de Liberación Nacional/Central Auténtica Nacionalista (MLN/CAN)	23
Unión de Centro Nacional (UCN)	21
Democracia Cristiana Guatemalteca (DCG)	20
Partido Revolucionario (PR)	10
Partido Nacional Renovador (PNR)	5
Partido Institucional Democrático (PID)	5
Partido de Unificación Anticomunista (PUA)	1
Frente de Unidad Nacional (FUN)	1
Organización Campesina de Acción Social (OCAS) (Local committee in Quetzaltenango)	1
Partido Nacional Renovador/Democracia Cristiana (PNR/DC)	1
	88

153. Eleven other parties or committees obtained no seat at all.

154. As for the observers' reports, it has emerged that no official documents were ever issued, even by the OAS. The United States Embassy compiled a document which contains the various Press statements made by the observers, including the contingent from the United States of America. Therefore, as in the preliminary report, the Special Rapporteur has had to rely on these Press statements. They said they had been given every facility to move freely throughout the country. They said the voting had been peaceful, orderly and free. The observer from Costa Rica remarked upon the enthusiasm to vote among the population and that there were no pressures put on the people, either by the army or the parties. The OAS observers were absolutely satisfied and congratulated the Supreme Electoral Tribunal for their organization of the poll. They also congratulated the population for giving a lesson in democracy to other countries. The delegation from the United States of America said they had, between them, covered most of the country. They had been well received, and also wished to congratulate the Supreme Electoral Tribunal. The voters had participated patiently in a process leading to democratic government (there were long queues at some polling stations).

155. The army was extremely active, but not at the polling stations. They were engaged in ensuring that the guerrillas did not disrupt the election.

156. There are less favourable comments, too. The Guatemalan Church in Exile asked, from Managua, whether there could be free elections in an occupied country. They said that the only "acceptable" political activity is within the limits of a counter-insurgency programme. The Committee for Justice and Peace attacks the legal foundation for the elections, and speaks of anomalies and denial of rights brought about by repression and terror.

157. The spoiled and blank voting papers have also attracted attention. The Supreme Electoral Tribunal put this down to illiteracy and to dissatisfaction with the choice available. The absence of any party to the left of centre has been widely emphasized and there was probably an element of a protest vote in these spoiled and blank papers. However, there were only three disputed results. A recount for the third seat on the district list was held in Alta Verapaz, and the result was altered: the new majority for the successful party was one vote. In Suchitepequez a request for a recount was denied because it was not made within the specified time. In Quiché one of the candidates was the brother of the chief of the fire department, and another party complained that the firemen had influenced the voting; if this was the case, they were not very successful, since his party lost.

158. When the Constituent Assembly was convened on 1 August, the first leader of the DCG was elected President. He was Roberto Carpio Nicolle, brother of the leader of the UCN. When the Special Rapporteur saw him the Assembly had not really begun its work. He had no doubt, however, that the people wanted to live under the rule of law, with a democratic Constituent Assembly which maintains human rights. The Special Rapporteur also spoke to representatives of the FUN, the MLN/CAN and the UCN. The first pointed out that, if there had been a different system of proportional representation, they would have won two seats, rather than one. However, nobody had any complaint about the election. They all outlined their future political platforms; but the Head of State has made it very clear that the Assembly is not to exceed its specified functions, which do not include political reforms. The parties accept this.

159. Since the preliminary report was written matters have moved on in a satisfactory fashion. The Supreme Electoral Tribunal continues to operate and it is anticipated that it will organize the next election for President and Congress. It is continuing to register citizens so that they will be able to vote. The previous registrations remain valid, and with the additions about 2,750,000 citizens are now registered. The details are kept on cards and also on a computer which has a sophisticated programme to detect frauds. The Tribunal's other activity, that of fully registering political parties, is currently at a standstill, because it depends on the new electoral law which has not yet been promulgated by the Assembly. Once this is available the Tribunal intends to proceed with its normal energy and thoroughness. Another view, however, prevails; that such registration of the parties could now take place under existing legislation. This point arose on the last evening of the Special Rapporteur's January visit, and could not be resolved. Whatever may be the position in law, the practical necessity is to authorize the parties as soon as possible so that they may be ready for the election campaign.

(b) The Political Parties

160. During his visit in January 1985, the Special Rapporteur discussed the current situation and prospects for the future with the Christian Democrats; the Frente de Unidad Nacional (who, after the murder of their single deputy - who had in any case transferred his allegiance to the MLN - now again have a deputy in the Assembly): in the case of a vacancy in a departmental constituency, the members of the same party who came second in the vote is the successor; and a group of right-wing parties, the MLN, PID, MEC and NLP. In addition, on those visits to the Assembly contact was made with the deputies of various parties, and the Special Rapporteur had a long conversation with a deputy who is a member of the UCN. This represents contact with almost all of the political blocs currently participating in the Assembly.

161. Although all the parties were happy to talk about the political campaign which they will launch when the date for the next election is announced, it is understandable that none of them wish at present to publish their political platform. They are building up their party apparatus and agreeing on the policies which will be presented to the electorate. There are, however, three matters at least which are of common concern:

(a) The need for a comprehensive and well-presented political campaign which will reach the whole electorate and, it is hoped, enable them to make an informed choice in their votes. Political education, on a party basis, is currently being carried out and is expected to continue.

(b) The control, and possible further development, of the current arrangements for interinstitutional co-ordination. Such co-ordination is vital for any properly planned deployment of national funds and efforts for development projects. The control, especially at departmental (provincial) level is of great concern. However well it may have been run by the military commanders, there is a clear commitment by the Head of State and a unanimous agreement by the parties that this exercise must be placed under democratically elected civilian control. It therefore seems probable that recommendation (b) in paragraph 256 will be fulfilled as part of the constitutional provisions; but the important impetus for development will continue.

(c) A constitutional guarantee for the independence of the judiciary is widely accepted among all the political parties. The fundamental provisions are likely to be included in the Constitution; the details, such as training and career structure, will remain for the new Congress. However, there seems to be universal consent that major improvements are needed and the President of the College of Advocates was in complete agreement.

162. Apart from such specific issues, the parties are involved in intense negotiations on a large range of issues. On particular matters, alliances and agreements come and go. There is a great deal of flexibility, of bargaining, of jockeying for position and political compromise. The Special Rapporteur recognizes this as a normal parliamentary process; the smaller parties vote or abstain according to their assessment of the merits of the issue. The result may be a delay in the final legislation, but the atmosphere, and the process, is essentially democratic.

163. The main ingredient of the current delay in the process is the enormous public interest in, and contribution to, the constitutional exercise. The Assembly is a lively place in itself. It sits in the morning and from 1500 hours until the debate has concluded. There is great public interest and the galleries are frequently full. Further than this, when topics have arisen for discussion as matters to be considered for inclusion in the Constitution, lobbying has been very active. The response has been an attempt by the deputies, organized as drafting committees, to include provisions to meet many points of view. The Special Rapporteur was invited, by the deputies who are drafting the chapter on Human Rights, to advise them on the text so far elaborated. He made it clear that it is no part of his functions to influence the Assembly on such matters; however, he ensured that the Committee had a copy of the International Conventions; he suggested that, in their zeal to cover every point, they should not enter upon such detail that subsequent legislation would be unduly restricted as being unconstitutional and ultra virés. The Assembly has appointed a central drafting Committee of 30 of its members. In the field of human rights, as well as in all

other aspects, they are aware of the need to prepare a sound framework, within which the new Congress may lawfully legislate to meet the particular needs of the country's affairs as they occur and as they evolve. However, it must be said that this exercise is occupying a great deal of time.

164. A group of trade unionists told the Special Rapporteur that they were concerned about draft provisions in the Constitution which could radically affect their employment security. Again it appears that the initial drafts contain too much detail: if the guiding principles were refined, there would be room for subsequent discussions in the new Congress about the detailed implementation, and in this case, of the provisions for health and social security. This could take proper account of employment implications and health benefits which would be available.

165. A further point on which there seems to be broad agreement, both within the present Government and among the political parties, is the need for the broadest spectrum of political opinion to be represented among the options available to the electorate. There are items in the Press about proposed groupings of parties to the left of centre. The Head of State visited Costa Rica to invite all Guatemalans in voluntary exile to return, offering them guarantees of freedom of activity. Among those to approach is the Social Democratic Party, a leading member of which has now returned to Guatemala. Unfortunately, the Special Rapporteur was unable to arrange a meeting with him.

166. One important item is likely to be put right. The CDHG has drawn attention to two existing laws which would restrict the range of political parties which could stand at the next election. One is an Article in the present Fundamental Statute of Government, which needs no discussion since the whole Statute will be superseded by the new Constitution. But Article 396 of the Penal Code makes provision for substantial penalties for "promoting the organization or functioning of associations which act in accord with, or in subordination to, international bodies which propound Communist ideology or any other totalitarian system". The solution of this problem is that if the Constitution, as is said to be intended, specifically allows political parties of every nature to operate, the Article in the Criminal Code will become unconstitutional and so could not be enforced. In practice, no doubt, it would be repealed.

167. The Presidency of the Assembly has rotated among the leaders of the main parties.

168. One question to which no clear answer is at present available is the date of the next, full-scale, election for President and Congress. The Head of State is on record as still hoping for July 1985, with a hand-over of power perhaps in August. The Supreme Electoral Tribunal says it needs four months for preparation which means that the Constitution and the Electoral Law (which has not yet been started) would have to be ready in March. It seems more than possible, therefore, that the schedule will slip. There could also be a two-stage election for the President; there may be three candidates of which the two who gain the most votes will enter a second contest. A civilian government may not occur until the beginning of 1986. There is no indication at all that any such delay is desired by the present Government; moreover, delay could adversely affect the morale of the population, and disappoint international opinion. But it may have to be faced.

(c) Freedom of association

169. This human right must have been enhanced by the repeal of Decree-Law 9-63 (see para. 183). The main concern, however, centres on the position of the trade unions. What is said here must be provisional, since the Special Rapporteur spoke to the trade unionists after his interview with the Minister of Labour, who has not, therefore had an opportunity to comment.

170. The Minister was optimistic, stating that he wishes to improve relations between employers and employees; that the two must coexist and that collective bargaining is advantageous to all. There are difficulties in establishing a minimum wage, since the economic situation is not favourable. Unemployment is running at 16 per cent as opposed to 12 per cent in past years, but this is part of the recession affecting all third world countries. New unions can register in accordance with the labour laws: he would be attending in a few days' time the inauguration ceremony for three new unions.

171. For seasonal labour migrating to the large estates, there are rules that are enforced by an inspectorate. Ten cases of non-compliance were reported last year, but persuasion is normally used rather than legal proceedings; employers seem to be ignorant of the law. The Minister sees the need for new legislation to protect seasonal workers, by provision of proper accommodation for the complete family, with health and educational facilities. (It was not until later that the problem of educational continuity and the variety of indigenous languages in which young children normally talk, and are initially educated, was drawn to the Special Rapporteur's attention.) The Minister did not appear anxious to discuss the problems that would confront the economy if the seasonal workers were able to make an adequate living in their own villages and so lost the incentive to migrate to the large estates for harvests.

172. He supported the development programme for the rural areas, not least to stop the flow of people to the cities where they tend merely to exacerbate unemployment. Craft industries for home and export markets and tourism would all assist the employment situation: the Government seeks to encourage both.

173. There was only one area of common ground between the Minister and the trade unionists: their agreement that the unions should not become involved in politics but concentrate on improving wages and conditions of work.

174. The union members presented a picture of decreasing union activity. The movement is weak, even crippled, by the disappearance of so many of its leaders. This is a current problem, although it had been going on for at least five years. The remaining leaders are constantly afraid of disappearance or death, since they believe that the movement as a whole is regarded as subversive. They gave the Special Rapporteur the general impression of living in a constant state of apprehension and anxiety.

175. There is a desire for a more widely based confederation of trade unions, but such organizations exist only in name. Union activity is restricted to individual plants or enterprises and none have survived in the agricultural sector. There are difficulties of a procedural or bureaucratic nature placed in the way of new registrations by government; employers tend to exert pressure to discourage the work-force from producing the required percentage vote to form a union.

176. As a result of all this, union activity has been reduced to self-preservation, participation in bargaining for wage agreements - though not from a position of strength - and an attempt to preserve jobs as far as possible. There was a crisis

earlier in 1984 when the nominally independent firm that bottled and distributed Coca Cola in Guatemala became insolvent and threatened to close down. The company said that it had sufficient money for statutory redundancy payments, but the union was concerned with preserving the jobs themselves. They obtained international support, including money for food: the workers had immediately staged a sit-in. There was a danger of the electricity being cut off and creditors repossessing the machinery. In May the situation was resolved when the parent company undertook actively to search for a new entrepreneur who would re-employ the work-force. The Special Rapporteur does not know the final outcome, save that bottles of Coca Cola were readily and universally available in Guatemala in August. In January 1985 this problem still had not been resolved. The parent company in the United States is still seeking a local entrepreneur to take on the franchise and re-open the factory.

177. The Special Rapporteur was told that there are unions in the capital, in Retalhuleu, Suchitepequez and elsewhere in the south, but in total fewer in number than 30 years ago. The press shows that new registrations do take place, for example that of a union in the Industria Licorera Guatemalteca during the Special Rapporteur's visit.

178. Conversations with trade unionists in Guatemala and those in exile in Mexico emphasized their desire that the international community should be made aware of their preoccupations. They were depressed and appeared harassed. They would like an International Labour Organisation mission to be invited to Guatemala. It must again be emphasized that the Special Rapporteur did not have the opportunity to put these points to the Minister, in so far as they are critical of him and his staff, but there is now prima facie evidence that all is not well in the field of trade unions, and the Government may wish further to consider the ways in which progress may be made, within the agreed non-political limits of activity, to reach a more felicitous relationship with the trade union movement as a whole.

179. The issue is concluded for the moment with this point. There were no May Day parades last year. The Minister said that this was because people preferred to spend their free day in leisure activities including visits to the parks towards the provision of which employers contribute. The unionists, however, said that there had been no parades because the leaders were afraid of being publicly identified. This is another matter to resolve that would require massive research.

180. During his visit in January the Special Rapporteur met more trade unionists. One union, which operates on a national basis, said that it was much less restricted and threatened than three or four years ago; but that still, in negotiations, it could not exert much pressure on the employers. Three other unions, however, indicated that the situation had not changed from that described above: that they feel threatened and intimidated, and that they are virtually powerless to negotiate for wage increases or better conditions of employment. For some, open activity is impossible. All of this group were extremely critical of the present attitude of the authorities towards the trade union movement.

181. As opposed to the figures for unemployment in paragraph 170 above, one of the major political parties estimated, in January, that it was about 46 per cent in the interior and 32 per cent in the city.

2. Freedom of expression and religious freedom

(a) Freedom of expression

182. There now seems little room for criticism on this matter. It is not a human right on which it is easy to give specific examples, but three points may assist.

183. There was a Decree-Law passed, 9-63, which contained Draconian provisions against any form of communist activity. Communism was not defined and the decision as to who fell within the law appears to have been administrative, in the hands of the Minister of Defence, rather than judicial. With the repeal of this law the Head of State is on record as saying that if the new Constitution so provides there will be no prohibition on persons or parties with left-wing views, however extreme, taking part in the next elections.

184. Although there were a certain number of regrettable incidents, reported in paragraph 148, the campaign for the July election does not appear to have been inhibited in any substantial way. The politicians went freely round the country and all the media carried the various parties' political message. The Special Rapporteur has seen much of what appeared in the newspapers, and was told that both radio and television were also extensively used. What the parties said was naturally limited because the role of the Assembly is confined, as set out elsewhere.

185. The Special Rapporteur inquired of the reporters themselves whether there was any censorship. The answer was that there is not, although the newspapers apply to themselves a certain amount of discretion in what they say, no doubt (though this is the Special Rapporteur's own supposition) by way of any criticism of the Government. They had no such inhibitions over criticizing the Special Rapporteur. His press conference was fully and fairly reported, including the matters on which he was critical of the human rights situation in the country.

(b) Religious freedom

186. No significant new facts have emerged since the last report. There is no complaint from the various Protestant churches, who are in any case able to fulfil their ceremonial and pastoral functions without necessarily requiring ordained ministers to be in charge. However, the attempt by the Hare Krishna organization to obtain registration has still not been successful; the Ministry of the Government has not produced any reasoned refusal and it appears that their application will have to receive continued consideration.

187. As for the Roman Catholic Church, relationships with the Government are improving, and the Archbishop and Head of State do co-operate in resolving difficulties. The diocese of Quiché, however, is in a very bad state. At one point there was only one priest for the whole of Nebaj municipality. There are now five for the whole department. The indigenous people have reacted strongly against the type of church leadership in their area that seemed to have been heavily influenced by liberation theology, leading to active or passive co-operation with the guerrillas. Since their desire is for peace in their villages they want no repetition of that.

188. The Archbishop told the Special Rapporteur that although the army retains some convents it is gradually returning church property. As for the future of the country in general he placed much hope on free elections with full participation of the indigenous peoples. They need education in order to take their proper place in society. He also deplored the disappearances, even though he thought they had decreased; if people are accused of being communists (and presumably some other offence) they should be brought before the courts. The other essential is a land reform.

III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Standard of living

189. Both the National Reconstruction Committee (CRN) and the army have published information about projects, completed and planned. During the first half of 1984 the CRN continued with its programme of improvements to the nation's infrastructure: water supply, irrigation and sewerage, including 49 systems for providing safe drinking water; 137 new schools; 220 km of new roads and 21 bridges; 1,094 new houses and a variety of rural improvements such as reafforestation and fish farming. Distribution of food has also continued. The only matter of concern that has been brought to the attention of the Special Rapporteur relates to certain zones on the fringes of the capital: he received a petition seeking support for a campaign to bring uncontaminated water to the colonia of El Milagro; in two other zones the press reports poor conditions or threats of eviction for families who have occupied private property by building shanties. These shanty settlements are the result of migration from the country by people looking for work, as indeed happens in many countries. Thus the introduction of projects bringing employment in rural areas has been given due priority: in the Altiplano these are mainly connected with the development centres; new crops, cattle breeding and small industries, using local products, are being introduced. Between January and June titles to land were granted, for example 373 in Acul, 239 in Tzalbal, Quiché, and 251 in Chisec, Alta Verapaz.

190. The Special Rapporteur is convinced that this whole area of activity is still of great importance in human rights terms. However, it was covered extensively last year and only two examples out of the numerous schemes explained to the Special Rapporteur are included here.

191. In the localities of La Técnica and Yanahí, Petén there are four projects at an early stage of development. One problem is that of pure size (the department constitutes 33 per cent of Guatemalan territory) and communications. The municipality of La Libertad, in the west, is larger than the department of Huehuetenango and has effectively only two roads. The population of 93,000 is very thinly spread; many are still displaced, wandering in the jungle and forests. They are mainly not indigenous people, having come from other parts of the country.

192. The development centre most far advanced is Yanahí, close to the Usumacinta river, the border with Mexico. The site has been cleared, and it will be a co-operative. Each farmer will be granted 64 hectares. The land is fertile, at least to judge by the splendid crops in the fields round Las Cruces, rather further east. (That town had at one time been virtually abandoned, but is now resettled.) However, the area is one where the guerrillas of the Revolutionary Armed Forces (FAR) are currently active.

193. La Técnica is currently a small military centre beside the Usumacinta, not far from the Mayan ruins of Yaxchilán on the Mexican bank. There used to be a co-operative settlement nearby but that has been abandoned in the fighting. In the centre a civilian population is arriving. When the Special Rapporteur was there only the men had come, and some had gone back to collect their wives and children. Some came from a place fairly near called Villahermosa (not the Mexican City of that name), where they had had, in fact, no trouble. They had heard that at Yanahí there would be facilities such as schools, a medical centre and land. They would grow their normal subsistence crops but were also interested in other produce such as tomatoes, melons and other new fruit or vegetables, and would hope for tuition in growing these, as well as roads and transportation to reach a market.

194. Others had come from a much more disturbed village, where the guerrillas had taken their crops, taken away villagers and attacked people working in the fields. They had the same expectations from the new project.

195. The published plan for Yanahí shows a provision for 100 families. The road from La Libertad will be extended to the settlement; telephone lines and electricity will be provided and a landing strip built. Studies are in progress to evaluate the possibility of keeping cattle and bees, fish farming and the growing of a variety of crops, including timber and fruit, so the would-be inhabitants' hopes may well be fulfilled. Twenty-seven governmental agencies are involved and the intention is to complete the project by January 1985; in August the site was already cleared and marked out.

196. At the other end of the country in Izabal, the major project in the municipalities of Livingston and El Estor, mentioned in the last report, began in May and will take five years to complete. Two large volumes describing the elaborate plans in great detail were published in July, demonstrating the careful study that underlies this ambitious scheme. The benefit will be shared by 22,500 people; 4,700 children are expected to be receiving education by the fifth year.

197. The Minister of Agriculture explained to the Special Rapporteur a simple method of storing apples, pears and plums so that the fruit may be kept for sale at the peak of the market. This cheap system is being widely introduced.

198. It may be useful, however, to say more about individual examples of the programme of development centres that can already be seen on the ground. The programme includes reconstructing settlements in several of the north-western departments and building others in new positions. The Special Rapporteur has previously reported on Acul, near Nebaj, Quiché, and Chisec, Alta Verapaz. The former was completed about the end of 1983, and the Special Rapporteur saw from the air that everything was finished, the temporary encampment removed and the road built not only to Nebaj, but further into remoter parts of the Ixil triangle, to Tzabal and Juil (only just complete), which are smaller. There are army detachments stationed in all three, but no perimeter fence, of barbed wire or anything else, as could be seen from the air.

199. On this visit the Special Rapporteur went to four such settlements, and talked to members of another community who may be involved later in the programme.

200. The settlement at Pulay, Quiché was of particular interest since the Special Rapporteur had been to the site in 1983. It is at the junction of the roads from Nebaj to Cotzal and Chajul in the Ixil triangle. A year ago the Special Rapporteur photographed the sparse, burnt remains of the village, totally deserted, and talked with some of the inhabitants who had taken shelter in Nebaj. They had said, as reported at that time, that they would like to return to their land at Pulay when it was safe. At that time the Special Rapporteur also discussed their prospects with a group of Ixil widows, and their children, who were in Nebaj, hearing of their anxieties for the future.

201. This August the Special Rapporteur saw them all again. Pulay has been completely rebuilt on the original site, the families are back on their land and they have accepted 25 of the widows with their children (who were not originally from Pulay) and two families from Nebaj. There is now a health

centre, the school is almost finished and the road greatly improved by the central Government (not as part of the work-for-food programme). There are still some 15 families missing from the original community, presumably displaced in the mountains, but their land has been preserved. The rest of the population has renewed cultivation of their own land - they propose soon to start keeping cattle - while the 25 widows are being helped with their maize crop and firewood, and have been leased some land on which a potato crop was, for the first time, being planted. There is running water (the old system with an inadequate pipe) and now electricity. Protection is given by a civil patrol, who dealt with the only guerrilla incursion that has occurred; the nearest army detachment is about 3 kilometres away.

202. This is a community that traditionally has migrated to the south as seasonal labour on the large estates. This creates problems since the accommodation on the estates is normally a large barn, with no partitioning for privacy. If the children accompany them, there is no schooling, which anyway would be difficult because they speak Ixil and not Spanish. If the families stay behind the men are now concerned for their safety. Thus, they said, if the cattle and potatoes are a success, and if they could find other income such as work on the road, they are contemplating not going again to work on the estates.

203. It would be ironic if the improvement in the standard of living in the Altiplano enables the population to make enough money without migrating to the coastal estates as seasonal labour. This would be devastating for the agro-export industry, as appeared from other discussions in Escuintla and San Marcos. The Special Rapporteur does not know if any plans are being made for such a contingency. In terms of human rights it must be preferable for the indigenous populations to be self-sufficient; the effects of their self-sufficiency on the national economy are outside the Special Rapporteur's mandate. However, any political attitude that, to protect the large estates and their crops, reacted against a refusal of the traditional seasonal workers to migrate, should be considered carefully in human rights terms.

204. Palestina, Las Cruces is another rebuilt settlement, in a very disturbed area of west Petén. From the air it seems to be a typical development centre with the standard new houses and facilities. It is mentioned here only because, after a year of army presence, the Special Rapporteur was told that they have left and security is in the hands of a civil patrol.

205. In the rest of the settlements visited by the Special Rapporteur there was still an army detachment. The presence or absence of an army detachment relates back in part to the question of freedom of movement (see paras.120-122).

206. Acamal, Alta Verapaz, was in August a new settlement, near the departmental capital of Cobán. The land was previously an estate in private ownership and was bought by the Government. The original population of 38 people had in August grown to 1,178, coming from a number of different villages and hamlets in the vicinity. These were deserted for the most part though a few remained partially inhabited.

207. The International Association against Torture, Italian branch, appealed to the Government in June 1984 on behalf of the inhabitants of "the concentration camp" controlled by the army, the "model village" of Acamal, where the people are dying of hunger, and the majority of the country-people concentrated there are severely ill with tuberculosis and are badly undernourished. In fact, the

inhabitants probably were initially in a very bad state since many of them had been displaced persons and had been having difficulty in surviving. That description, however, was wholly inaccurate in August, and the more so in January 1985.

208. What was happening last August was that a completely new community was being constructed. As in other settlements of this sort, the population were, in August, in temporary accommodation and were building their new houses and infrastructure with professional assistance. The project is that the people from the surrounding villages, who were largely displaced persons, or internal refugees, should settle in the new centre but be able to work their own land in their original villages. Communal land is also being provided. The settlement is protected by a civil patrol, but people going out to work their own land will not have any escort from the civil patrols.

209. In the settlement is a school, where young children are taught in Kekchi and later Spanish. There are reading books written in Kekchi. There is also a health centre, where the Special Rapporteur saw children being vaccinated.

210. An element that may particularly relate to the allegations of "brainwashing" is the fact that many of the inhabitants were formerly either actively or passively involved with the guerrillas. There is on display a notice that lists the names of certain inhabitants of the settlement, with their guerrilla nom de guerre and rank; the pseudonyms for the various local villages, as adopted by the guerrillas, are also set out. (Presumably if both people and places were only known by everyone under false names, members of the guerrilla movement could not betray each other if captured.) The former guerrillas, including their leaders, are now prominent again in the new settlement. The Special Rapporteur talked to at least one. They have all taken advantage of the amnesty.

211. The situation in January 1985 was markedly changed. Acamal itself holds about 500 families, most of whom now have their houses with running water and electricity. The school is almost finished and most of the temporary structures have gone. Education continues in Spanish and Kekch; however, some of those whom the Special Rapporteur saw at Acamal in August have now moved back to their original village, called Saraxoch. The original community is again complete, and people have recovered their original land; consideration is currently being given to the question whether each family will cultivate its own plot, or whether the land will be developed as a co-operative. There are plans to grow potatoes, carrots, tomatoes, etc., for their own consumption and as a cash crop. A small herd of pigs is already being built up on the proceeds of a local activity using a sort of cactus-type plant called Mayit. This produces sisal fibres which are shredded and then woven into rope, which has a ready market. It also has other useful by-products. The village started about two months ago, and there are already 150 houses, two or three being built daily. (All the original buildings were completely destroyed some years ago.) There is a temporary school, and other facilities, such as water and electricity, will be laid on. The access road is being improved but is still in extremely poor condition in places.

212. The concept is to do the same for the other three or four former villages whose inhabitants are now in Acamal. It may be that ultimately Acamal itself will become merely a reception centre for any remaining internal refugees.

213. Chacaj, Huehuetenango was formerly an agricultural estate owned by the State. It is on the Mexican frontier a little south of the north-west corner of Huehuetenango. The project consists of building houses for about 1,050 inhabitants, with a further 2,500 hectares of communal land available, and an irrigation scheme. A road is almost complete, connecting the village to Nentón. One hundred and four houses were ready in August, and the materials were available for many more. There is water and electricity. At present people are building their houses and being provided with food.

214. The unique feature was that all the people, except an army contingent, have returned from Mexico after about two years. Some had been official refugees, but most of those with whom the Special Rapporteur spoke had been in Mexican villages and had been engaged in some form of work that disqualified them from having refugee status. They originated in Huehuetenango or Ixcán (northern Quiché). They had fled from violence, but it was difficult to tell who had been responsible. Some had heard that the situation in Guatemala had improved; others said that no news was available, particularly in the refugee camps. For one reason or another they were dissatisfied and wanted to return home. The route had been through the main border crossing on the road between Ciudad Cuauhtémoc, Mexico, and La Mesilla, Guatemala. The returning refugees were taken thence to Huehuetenango City.

215. It is of great importance to report on the attitude adopted there by the authorities. Official policy consists of offering the returning refugees a choice. They may return to their villages of origin, but only if certain conditions are fulfilled. These conditions are that if the village is not in an area of current conflict they may return at once. If it is, they may return at this stage only if there are enough people to constitute an efficient civil patrol. Meanwhile they may stay at Chacaj until such a sufficient population can be collected. It is not entirely clear whether all the returned refugees had understood the details of this choice, or its reasons. Some clearly had been properly informed, others were less clear. They had coffee and cardomum ready for cultivation in Ixcán, and very much wanted to go home. These crops consist of bushes that survive for several years. However, in the presence of the Special Rapporteur, the details were again spelled out. To choose a house in Chacaj was not a permanent decision, and those who did so could still later elect to return to their original villages.

216. Just before the Special Rapporteur reached Chacaj one of the army engineers building the access road was injured. The necessity to take him to hospital in the helicopter curtailed the Special Rapporteur's visit. There was no chance to ask about the incident at the refugee camp El Chupadero in Mexico on 30 April 1984. In view of information later received the Special Rapporteur regretted not having climbed the observation tower or asked the military contingent about the incident. In fact he did not know El Chupadero was so close (see paras. 239 and 240).

217. Finca Las Conchas, Alta Verapaz is a temporary camp on land rented by the Government from a private owner. The inhabitants all originate from a group of villages in northern Quiché. They had been involved in various degrees with the guerrillas, but were eventually abandoned by them and decided to return. Once free, these inhabitants established contacts with the army in an ingenious fashion. Some 608 people have now settled in Finca Las Conchas, where there is a school. They would like to have a health centre.

218. This is not a development centre, being merely temporary accommodation. Its inhabitants, however, had an interesting light to shed on the question of choice for resettlement. Their villages had been destroyed, though not their cardomum plantations. They wanted very much to return to their land. However, the original villages were widely separated and had no facilities. In order to enjoy the benefits of a school and health centre they were prepared to consider the possibility of retaining their own land and working it while living more centrally so that the community facilities could be available. However, they had reached no decision.

219. Just outside Flores, Petén, the Special Rapporteur was shown a prototype of the house that could be built in new settlements. The building materials are easily provided from ordinary local materials: straight-grained wood for posts, walls and roof timbers; palm leaves as a roof. The added attractions were a windmill pump for water and a methane plant, fuelled by all available sorts or excrement, to provide gas for cooking and, if necessary, lighting. These two facilities would probably be installed for a group of houses, rather than individually, in a new settlement. They are both well-tried systems; the Special Rapporteur has known windmills for decades in Scotland, the methane systems are a feature of Christian Aid's activities in Sri Lanka and no doubt elsewhere. Together they would remove from the women and children in a village the interminable drudgery of carrying pots of water and bundles of firewood over long distances and at frequent intervals.

220. Such elements of progress could only be made available in a substantial centre. Whilst not in any way retreating from the precept that people in the Altiplano should be able to choose where and how they will live, attention should be drawn to the attractive improvement in standards of living which these innovations would bring. Equally, however, the military objective of removing logistic support for the guerrillas by denying them contact with the population is fulfilled by these projects. The guerrilla movements, Guerrilla Army of the Poor (EGP), Fuerzas Armadas Rebeldes (FAR) and the Organización Revolucionaria del Pueblo en Armas (ORPA), have certainly not abandoned their fight, and confrontations continue to take place in Quiché, Petén and San Marcos. It is thus still too early to judge whether the army's role in the villages that are completed is purely for military reasons or has another purpose. However, some evidence is emerging that the authorities are respecting the wishes of the inhabitants of the Altiplano: the people of Pulay always wished to return to their village and have now done so; according to the press some of the refugees returning from Mexico have indeed gone back to their villages of origin and have not been settled in Chacaj. One other aspect of the development centres should be noted: they provide an opportunity for State-owned land to be made over to the local population. Titles to such land continue to be granted by the National Institute for Agrarian Transformation (INTA), the agency responsible. It should be recalled that shortage of land has been one of the main causes of the extreme poverty of many of the indigenous people, causing them to migrate temporarily to the big estates or more permanently to new parts of the country or abroad in search of land on which to farm.

221. Further evidence, on the basis of which some assessment may be made, was gathered during the Special Rapporteur's visit in January 1985. He visited Acamal and Samaxoch, where it is clear that both policy and practice are to help people to return to their original villages, but also to improve the quality of life there. In that area, security is not now so great a problem. But it most certainly is in the Ixil Triangle in central Quiché. There the Special Rapporteur went to two villages.

222. Tzalbal is a new village where the facilities are mostly complete. The road has reached it and there is electricity. Water is available and is being piped to each house. There is a school for 260 children, most of whom are in the kindergarten or first grade; in the former they are taught in Ixil but thereafter entirely in Spanish. An extension is being built. Adult literacy classes are held in the afternoon. The main problem is shortage of furniture, teaching materials, and books. The health post is temporary, but the programme of vaccination against tuberculosis, whooping cough, chicken-pox and poliomyelitis is in progress. At first the people were terrified but now understand the advantages and attend willingly. Birth control advice is available but in minimal demand. There are two churches and a playground.

223. There are 300 families, mostly from villages which have been destroyed but were not far from the present site of Tzalbal. They have land in the new village but there is evidence that families would like either to return to their original villages, or to live in Tzalbal while going to their original land to farm it. The proviso is always "if it were safe"; and nobody thinks it is safe at present. Most of the people had spent some time in the mountains after their villages were burnt; some had been with the guerrillas and had taken advantage of the Amnesty. Tzalbal had been attacked the previous night and on numerous other recent occasion. Thus, everyone was aware of the problem of security.

224. There is an army unit at the village as well as the civil patrol. The officer-in-command does issue passes to anyone who wants to go out; for instance to shop in Nebaj. There is no limit on the length of time people may stay away; indeed, many of the men were, in January, working on the coastal plantations. The only condition is that nobody shall return during hours of darkness, in case they are taken for guerrillas, or infiltrated by guerrillas. The passes are essentially for safe conduct.

225. There is no barbed wire, and people can go where they like in the village. In addition to growing their own food some were making bricks, and there is a reafforestation project and an experimental terraced nursery garden where some root vegetables are being grown, for consumption or sale: there are hopes that this will bring in extra money.

226. Salquil will eventually be a very similar settlement. It will be rebuilt on the original site but at present is on a well-defended hill, the buildings being temporary, but individual houses. The National Reconstruction Committee has a plan for the development of Salquil, and this has, indeed, been discussed with the villagers and so far is proceeding as intended. The next meeting was expected the following week.

227. The original Salquil had a population of 1,400. Many of those inhabitants are not in the present settlement but others have come in from surrounding villages and the present population is about 1,800. Some land is being cultivated in the vicinity, but other people walk daily, up to 2½ hours each way, to farm their land in their original villages. For this, the army detachment does not issue passes; there is no policy requiring passes at Salquil. However, those who go out usually organize themselves for self-protection, though they only carry machettes.

228. The Committee for Justice and Peace issued a statement last August that the army had killed a number of people in two villages in the area - called Parramos and Tuchavuc - and kidnapped others. Certainly, some of the people now in Salquil came from Tuchavuc; one to whom the Special Rapporteur spoke said that he had come for safety. Much light, however, can be thrown on the situation at Parramos from which a number of people have also arrived. The Special Rapporteur met a small group who had come the previous day. They said that Parramos, a remote village in the mountains on the Quiché - Huehuetenango border, was in the hands of the EGP. About 300 inhabitants remained, and when an army patrol approached they all moved out into the mountains. One of the men in this group had been required to assist the guerrillas and had done so after two of his brothers had been shot for refusing to do so. He became a trainer, teaching literacy, weapon handling, and general propaganda that nobody was to refer to God, and that the rich would be wiped out and the guerrillas would win the war. The people of Parramos are required to look after the guerrillas, grow food for them, and make traps for the army. This man had a friend, who had come to Salquil, and had returned to fetch his family. He had explained that Salquil was safe and the present group had then escaped also. They were now going to be provided with clothes (they were dressed in rags) and a house.

229. The Special Rapporteur is, therefore, of the opinion that it is not yet feasible in that area for people to live outside the established and guarded settlements unless they wish, or are prepared, to co-operate with the guerrillas.

B. Refugees

1. Refugees in Mexico

230. This is currently a much-discussed topic. In August the Special Rapporteur visited two comparatively small camps. One, called Paso Hondo, is near Ciudad Cuauhtemoc, the principal road crossing into Guatemala. The other, Santiago El Vértice, is just within Mexico, close to the angle of the border between north-west Huehuetenango and Chiapas. Again it is quite small, containing about 150 people; they came from an area very close by in Huehuetenango and had fled after the killings at San Francisco Nentón, which was near to them.

231. The Special Rapporteur spent some time with Professor Aristeo Jaimes Núñez, who is in charge of refugee affairs in the region on behalf of the Mexican Government's refugee organization, Comisión Mexicana de Asistencia a los Refugiados (COMAR). The next day the Special Rapporteur talked to Father Javier of the diocese of San Cristóbal de las Casas, whom he had also met last year. Father Javier was critical of the last report as failing to do justice to the refugees' problems. He was also critical both of the Mexican Government and of COMAR. The diocese published in July 1984 a substantial document setting out the criticisms in full.

232. The view that the Special Rapporteur has formed is that this dispute is not within his mandate. It is for the United Nations High Commissioner for Refugees (UNHCR) and the Mexican Government. His comments will therefore be rather restricted.

233. There were in March 1984 about 46,000 officially recognized refugees from Guatemala in Mexico. Comparison with the census taken in October 1983, which showed some 38,000, does not, however, indicate a new influx: COMAR says there have been no more refugees in 1984, the census has merely been more systematically carried out (the Special Rapporteur is not sure that the diocese accepts this). In fact there are more Guatemalans in Mexico: there has always been movement across the border, as occurs with Honduras, and a number of the people interviewed by the Special Rapporteur at Chacaj, in Huehuetenango, had come back from Mexican villages and settlements where they had found some degree of employment and were not official refugees.

234. Until recently the refugees have very largely been housed in camps all along the border, in the State of Chiapas, and often very close to that border. The policy is now to move them to the more northerly Mexican State of Campeche (on the Gulf of Mexico), and possibly also to Quintana Roo. Provided that this is done with the refugees' free consent the Special Rapporteur is wholly in favour of the move. Ever since they have been living in Mexico there is a history of allegations that the Guatemalan army or civil patrols have raided the camps, causing deaths and injuries. The Guatemalans say that in, or supported by, the camps guerrillas are able to find logistic and medical support. The Mexican Government vehemently denies this. Without going into any of the evidence, it is obvious that this long-standing source of irritation will disappear if the refugees leave the border zone. In Campeche they will be located at Canasayab and Pich, both of which are a substantial distance from the northern border of Guatemala, in the most remote and unpopulated part of Petén. Such a move cannot fail to decrease the possibility of cross-border incidents of whatever nature.

235. The problem therefore resolves itself into the issue of the refugees' consent. One complaint is that they are offered a simple choice between a removal to Campeche or an adjoining Mexican State and a return to Guatemala. Doubts are expressed as to whether the refugees or their leaders have had an adequate opportunity to assess their prospects in Campeche. The women are worried about moving again from surroundings that are now familiar. Questions are posed about pressure brought to bear on the refugees.

236. COMAR has elaborated 11 points of principle governing their future attitude to the relocation of the refugees. These are of an impeccable nature and include adherence to free choice by the refugees. The national Red Cross presidents from Mexico and Guatemala have recently been to Geneva to discuss the various problems with UNHCR. The President of the Guatemalan Red Cross, Sr. Jorge Torriello, is a survivor from the Arbenz regime in the early 1950s; he was a Government Minister and evidently has current influence in his country. His attitude to the return of refugees is that any such choice by them must be preceded by full explanations and accompanied by immunities and assistance towards resettlement. A full set of proposals has been formulated. There is a Guatemalan consulate in Comitán that has been giving most of the assistance so far.

237. The refugees in Paso Hondo and El Vértice were adamant that they do not know what is happening inside Guatemala. The former have the chance to talk to their fellow countrymen who cross into Mexico to shop, but they do not choose to do so, nor do they listen to the Guatemalan radio. In El Vértice the problem was said to be that everyone spoke the Chuj language and so did not understand what was said on the radio. In neither case had anyone been to tell them of the situation in Guatemala nor, indeed, would they be prepared to trust anyone who did so. This complete lack of information is not easy to believe, but it may be a safety measure to postpone a choice between Campeche or elsewhere in Mexico and a return to Guatemala.

238. The professor in charge of COMAR knew nothing of the new settlement at Chacaj, nor of the Guatemalan policy for returning refugees. Some refugees were aware that people had returned across the border. There is little evidence that any consistent attempt had yet been made in August to explain the choices to all the refugees.

239. One event has had a great impact. On 30 April 1984, at about 0300 hours, some heavily armed men attacked the refugee camp at El Chupadero, Mexico, which is close to the border and to the Guatemalan development centre at Chacaj. Six people were killed, another died later and more were wounded. The remainder fled further into Mexico, but their assailants stayed in the area until about 0930 hours. They were dressed in the camouflaged uniform worn by the Guatemalan army. The attack was, however, apparently launched from the Mexican side of the camp. The attack has been denounced as an atrocity committed by the Guatemalan army. Both the Guatemalan and Mexican Governments have made inquiries. The former rejects the suggestion that its troops were involved. The Mexican report apparently does not attribute responsibility, but the Special Rapporteur has not seen the text of the document; it establishes that the aggressors were in uniform, but says that Guatemala should seek to find out who was guilty.

240. The Special Rapporteur very much wished to talk to the inhabitants of the camp, about 2,500 in number. He was told specifically by COMAR that they were widely dispersed. In San Cristóbal, however, he heard that they were all at a place called La Gloria San Caralampio. Apparently this is not an easy place to reach, especially in the rainy season prevalent in August. Anyway, he did not see them.

One point in dispute is whether or not the site of El Chupadero camp can be observed from the watch-tower at Chacaj, which is manned by the Guatemalan army. Father Javier in San Cristóbal thought that there was intervisibility; the Special Rapporteur has since obtained other information that contradicts this. It is a simple fact, but the Special Rapporteur cannot say which version is true.

241. It is a major incident and people were undoubtedly killed and wounded. Applying the test, who could gain most from such an attack, there are arguments pointing both to the guerrillas and to the Guatemalan army. There are equally good arguments to the contrary in each case and the Special Rapporteur cannot say who did it. A full inquiry would have to collect evidence in both countries and would require much time and diligence.

242. During his visit in January 1985 the Special Rapporteur learned that about 22,000 refugees had returned from Mexico, of whom 2,000 were officially recognized by the United Nations High Commissioner for Refugees. Some 200 families were at Chacaj, and the rest had returned to their villages of origin. The President of the Guatemalan Red Cross had continued his collaboration with his Mexican counterpart, and they had had further discussions with the Mexican authorities and with the United Nations High Commissioner for Refugees in Mexico and Geneva. It was hoped that further official crossing points would be established in north-west Huehuetenango (near Chacaj) and in Ixcan (near the new settlements being built in the Playa Grande area). Returning refugees could also have been received in Chisec, Alta Verapaz, and some had also crossed the Usumacinta River into West Patén, where there are now facilities to receive them at Yanahi. The full range of reception facilities, however, are not yet complete. Efforts are currently being made to arrange for visits by Red Cross teams, with interpreters, to explain to the refugees in the camps the current situation in Guatemala and the options open to them; and for some of the leading members of the refugee groups to return, under Red Cross auspices, to inspect the situation so that they may go back to Mexico and tell their comrades what they have seen.

2. Refugees in Honduras

243. It did not prove possible to visit the camp at El Paraíso, in the north-eastern department of Copán. The camp is in a remote area and there was insufficient time to reach it. However, the Special Rapporteur is extremely grateful to the chief of the immigration service at Copán Ruinas and his staff for providing all the information at their disposal.

244. For many years Guatemalan citizens have been crossing the border to participate in the harvest of crops such as tobacco in Copán. When violence broke out in the 1960s in eastern Guatemala some of those migratory families decided to remain in Honduras. By now they are settled and do not possess refugee status.

245. In 1981, however, Guatemalan citizens began to enter Honduras as refugees from the conflict in Guatemala. They arrived in family groups and sought refuge in various small villages near the frontier. They were collected from these villages by the Honduran authorities and the camps El Tesoro and El Paraíso were provided. They were also granted refugee status and came within the jurisdiction of the UNHCR. The Honduran Immigration Service has a list containing 586 names, divided into family groups and indicating the Honduran village where they were respectively discovered. This list has been revised as refugees have left Honduras. There have been no further names added for about two years and more may have returned to Guatemala.

246. The Honduran Government has provided land for the refugees at El Paraíso, which they are now farming. They are so productive that they provide food for other refugees. There are no restrictions by the Honduran or Guatemalan Governments that would prevent their returning to Guatemala if they so wished. Some have done so and a few others have left for other countries. Since the Special Rapporteur was not able, during this visit, to talk to the refugees themselves in the camp he cannot report on their wishes or intentions.

3. Refugees in Belize

247. With the assistance and advice of the relevant authorities the Special Rapporteur visited the villages of San Lazaro and August Pine Ridge in the western part of the district of Orange Walk, near the Mexican frontier, the capital, Belmopan, and Benque Viejo del Carmen in the district of Cayo; this town is on the frontier-crossing to Guatemala. The Roman Catholic parish of Benque Viejo, indeed, includes the municipality of Ciudad Melchor de Mencos in the Guatemalan department of El Petén with its various villages and hamlets. The frontier is not closed at present.

248. The problem of those who are termed "aliens" in Belize is not a new one. They come from various nations, but predominantly from the adjacent countries. Although some of them have caused problems, the Belizean Government has adopted a positive attitude towards them. Assistance programmes have been available for some time, in conjunction with the UNHCR, to help the refugees from El Salvador. The Government is now considering the extension of this refugee status to people of other nationalities, including Guatemalans. To this end an amnesty was announced on 24 April 1984 to all aliens illegally residing in Belize as at 1 May 1984 if they registered at a local police station by 30 July 1984. One of two certificates was on offer: a provisional permit to reside in Belize with the eligibility to apply, after one year, for the status of a permanent resident of Belize; or a permit to reside in Belize as a refugee.

249. Further evolution of this policy continues, and the Special Rapporteur has discussed it with Ministry of Home Affairs and the UNHCR representative who was currently on a mission to Belize. Most of it is outside his mandate, but the Special Rapporteur wishes to record that procedures are in hand to assist Guatemalan citizens in Belize. Some of these say that they have fled from repressive conditions in Guatemala; others have crossed the frontier for economic or family reasons. This latter could be particularly relevant in the south-western district of Toledo; the Special Rapporteur spoke to a Belizean-born Kekchi from that area who thought there were "some hundreds" of indigenous people, largely also Kekchi, in his home district. Some were migrants looking for land that was not available to them in El Petén; others were dissatisfied with the Guatemalan authorities, attempts to relocate them into larger communities under the CRN's projects, where land, facilities and advice were available, but at the price of moving from their traditional farming land. The distinction between economic and political refugees is not easily determined.

250. Certain of the incidents that led to Guatemalan families departing for Belize are set out in paragraphs 45, 46 and 100 to 102; these are stories that for obvious reasons have not been cross-checked with the Guatemalan authorities, and the Special Rapporteur will return to them in his final report. Certain statistics are, however, interesting as indicating the extent of the problem in Belize. Under the 1984 amnesty 8,647 people registered up to 31 July 1984, of whom 4,848 were Guatemalans. (Officially recognized Salvadorean refugees are not included in these figures.)

251. Two things should be added. First, there are Guatemalan citizens who have been in Belize for a decade or so who could become citizens but who, for one reason or another, have not done so. They report regularly to the police but have no trouble except for the general unemployment situation. Second, the international dispute about Belizean sovereignty is a delicate matter. Every indication shows that constructive thought is being applied to this by all concerned, but it remains a factor to be considered, not least by Guatemalans living in Belize.

252. The statistics of Guatemalan citizens who registered under the amnesty by district are:

Belize (central east)	348
Cayo (central west)	2 012
Corozal (north)	573
Orange Walk (north-west)	903
Stann Creek (south-east)	213
Toledo (south-west)	799
	4 848

253. A common theme ran through what the refugees said, with a few exceptions. They had left Guatemala, mainly from Petén, during a period in the late 1970s and early 1980s, out of fear and because of the violence. Those who knew anything about the current situation said that in the last year things were better, more calm, in east Petén but not in the west. Evidently people do cross and recross the border, and the priest at Benque Viejo and his assistant do so frequently in the course of their pastoral duties. One refugee family said that they thought their old hamlet in Petén, and others, had been completely destroyed; this is not true, as the priest's assistant told the Special Rapporteur from personal experience. The motivation for staying in Belize was that all was quiet there, they had houses, temporary work at least, and now through the amnesty legality of status.

IV. CONCLUSIONS AND RECOMMENDATIONS

254. On his third and fourth visits the Special Rapporteur spent 12 days in Guatemala, into which much activity was packed. To this should be added 11 or 12 days in 1983. This may be thought a brief period in which to understand the history, character, institutions and other factors that combine to constitute Guatemala. Fortunately, however, he had had the advantage of numerous discussions outside the country with people deeply concerned with the issues. Written material from a large number of sources had been sent to him and he had seen films and videos. His mandate required him to report on the situation on the basis of his own visits and other reliable sources.

255. The preceding paragraphs might be seen as a mere series of observations on particular topics. It is necessary, therefore, to emphasize that these are set in the wider context of all the sources of knowledge available to the Special Rapporteur about Guatemala. They deal with the matters that appear to be central to the current human rights situation in the country, those matters that others, too, have selected for comment. The Special Rapporteur is aware of the background against which this should all be seen and believes that they are a fair representation, or illustration, of the issues. They have the advantage of reflecting the views, collected during personal interview, of a large number of people: the most important members of Government and the church, the judiciary and others charged with major responsibilities of State; the diplomatic representatives of a number of countries; military commanders and other officers in the departments; municipal mayors and their deputies; a wide sample of people of Guatemala, in the capital, in towns and villages (see map in appendix II), all over the west and north of the country and in neighbouring countries; and with critics of the present regime and situation. The role of Special Rapporteur may tend inevitably to lead to suggestions of superficiality. He has attempted to pin-point the human rights that require attention and to show what is happening by first-hand evidence collected on the spot.

256. Accordingly, the Special Rapporteur recommends as follows:

(a) The process of a return to a democratically elected Government should be given every support. The terms of the new Constitution should be drawn up so as to guarantee the range of human rights contained in the two International Covenants. The Constituent Assembly should consider how it can assist in preparing the ground for the next elections so that the broadest spectrum of political opinion may be represented among the parties who will stand; the process should be completed as quickly as possible, consistently with thorough consideration of the issues;

(b) The Constitution could, with advantage, ensure that positions of power and responsibility at every level of central and local Government, including the role of co-ordinating the State agencies, will be in civilian hands. It should also establish independence for the judiciary;

(c) Violence and disappearances. These are an alarming feature of the current scene. A great variety of people are affected, but members of political parties, staff and students at, particularly, the University of San Carlos and trade unionists are among the victims. Whoever may be responsible, many forms of human rights violations are involved. The Government should urgently seek to

prevent these occurrences and to bring to justice those who have perpetrated such acts in the past. The three-man Commission now charged with investigating disappearances should act with full vigour and should be given full co-operation, not least from the DIT and BROE units of the police and the G2 unit of the army against whom many of the allegations are made. Families of the disappeared should supply the Commission with all information in their possession;

(d) An improvement in the climate of violence is urgently needed if a wider range of political parties is to be persuaded to participate in the next elections; parties of every political complexion should be encouraged to take part;

(e) Urgent consideration should be given to improving the working of the criminal courts. Technical assistance and training is needed to enable judges and court officials properly to implement the law and restore credibility to the judicial system;

(f) The development programme should receive every encouragement. However, there should be freedom of choice for people whether or not to live in the development centres; the nature of rural development should take into full account the wishes of the community concerned (as is already the policy);

(g) Distribution of land titles should continue and technical assistance be provided to enable country people to rise above subsistence levels of agriculture. Other forms of employment should continue to be encouraged in the rural areas; every effort should be made to reduce unemployment throughout the country;

(h) Standards of living and of accommodation and facilities for migrant workers should be raised and properly enforced. This is a measure proposed by the Government and should be supported;

(i) Trade union activity should be encouraged, protected and given due recognition as a valuable contribution to the freedom of society;

(j) The Commission for Peace should proceed with its task. The Assembly should be encouraged to set up an autonomous and powerful body, composed of persons of recognized integrity, to watch over the human rights situation and insist upon the investigation and correction of any violations;

(k) Refugees in all the surrounding countries, but particularly in Mexico, should be supplied with full and trustworthy information, on a continuing basis, about the situation in Guatemala. This would enable them freely to decide whether they wish to return to the country.

257. The order in which these recommendations are set out does not indicate any ranking in order to importance. Each and every one concerns significant human rights, although the right to life is the most fundamental of all.

Annex I

GENERAL ASSEMBLY RESOLUTION 39/120 */

Situation of human rights and fundamental freedoms in Guatemala

The General Assembly,

Reiterating that the Governments of all Member States have an obligation to promote and protect human rights and fundamental freedoms,

Recalling its resolutions 37/184 of 17 December 1982 and 38/100 of 16 December 1983,

Noting Commission on Human Rights resolution 1984/53 of 14 March 1984 in which the Commission expressed its profound concern at the continued massive violations of human rights in Guatemala,

Mindful of resolution 1984/23 of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in which the Sub-Commission recognized, inter alia, that in Guatemala there existed an armed conflict of a non-international character, which stemmed from economic, social and political factors of a structural nature,

Noting the elections to the Constituent Assembly held in July 1984, thus fulfilling the first stage of the electoral process for the institution of a new constitutional Government according to the time-table proposed by the Government of Guatemala, and affirming the importance of creating conditions in which the electoral process can be pursued in a climate free from intimidation and terror,

Alarmed at the continuation of politically motivated violence in the form of killings and kidnappings,

Alarmed also at the large number of persons who have continued to disappear and the unclear fate of those reported to have been tried by the special tribunals now abolished,

Welcoming the co-operation of the Government of Guatemala with the Special Rapporteur in the fulfilment of his mandate and noting with satisfaction that a list of cases having been dealt with by the special tribunals has now been handed over to the Special Rapporteur,

1. Takes note of the interim report by the Special Rapporteur on the situation of human rights in Guatemala submitted in accordance with Commission on Human Rights resolution 1984/53 of 14 March 1984;

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*/ The final edited text of this resolution will be published in Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 51 (A/39/51).

2. Reiterates its deep concern at the continuing grave and widespread violations of human rights in Guatemala, particularly the violence against non-combatants, the disappearances and killings and the widespread repression, including the practice of torture, the displacement of rural and indigenous people, their confinement in development centres and forced participation in civilian patrols, organized and controlled by the armed forces;

3. Urges once again the Government of Guatemala to take effective measures to ensure that all its authorities and agencies, including its security forces, fully respect human rights and fundamental freedoms;

4. Renews its call upon the Government of Guatemala to refrain from the forceful displacement of people belonging to rural and indigenous populations and from the practice of coercive participation in civilian patrols, leading to human rights violations;

5. Welcomes the fact that many of the persons who were tried by the special tribunals have now been released and invites the Government of Guatemala to publish the list of cases having been dealt with by the special tribunals;

6. Requests the Government of Guatemala to investigate and clarify the fate of all persons who have been subjected to involuntary or forced disappearances and are still unaccounted for and to put an end to arbitrary detention and imprisonment in secret places;

7. Urges the Government of Guatemala to establish the necessary conditions to ensure the independence of the judicial system and to enable the judiciary to uphold the rule of law, including the right of habeas corpus, and to prosecute and punish speedily and effectively those, including members of the military and security forces, found responsible for violations of human rights;

8. Calls upon the Government of Guatemala to allow an independent and impartial body to function in the country to monitor and investigate alleged human rights violations;

9. Reiterates its appeal to all parties concerned in Guatemala to ensure the application of the relevant norms of international humanitarian law applicable in armed conflicts of a non-international character, to protect the civilian population and to seek an end to all acts of violence;

10. Appeals to the Government of Guatemala to allow international humanitarian organizations to render their assistance in investigating the fate of persons who have disappeared with a view to informing their relatives of their whereabouts, to visit detainees or prisoners and to bring assistance to the civilian population in areas of conflict;

11. Calls upon Governments to refrain from supplying arms and other military assistance to Guatemala as long as serious human rights violations in that country continue;

12. Urges the Government of Guatemala to ensure a climate free from intimidation and terror which would allow the free participation of all in the political process;

13. Invites the Government of Guatemala and other parties concerned to continue co-operating with the Special Rapporteur of the Commission on Human Rights;

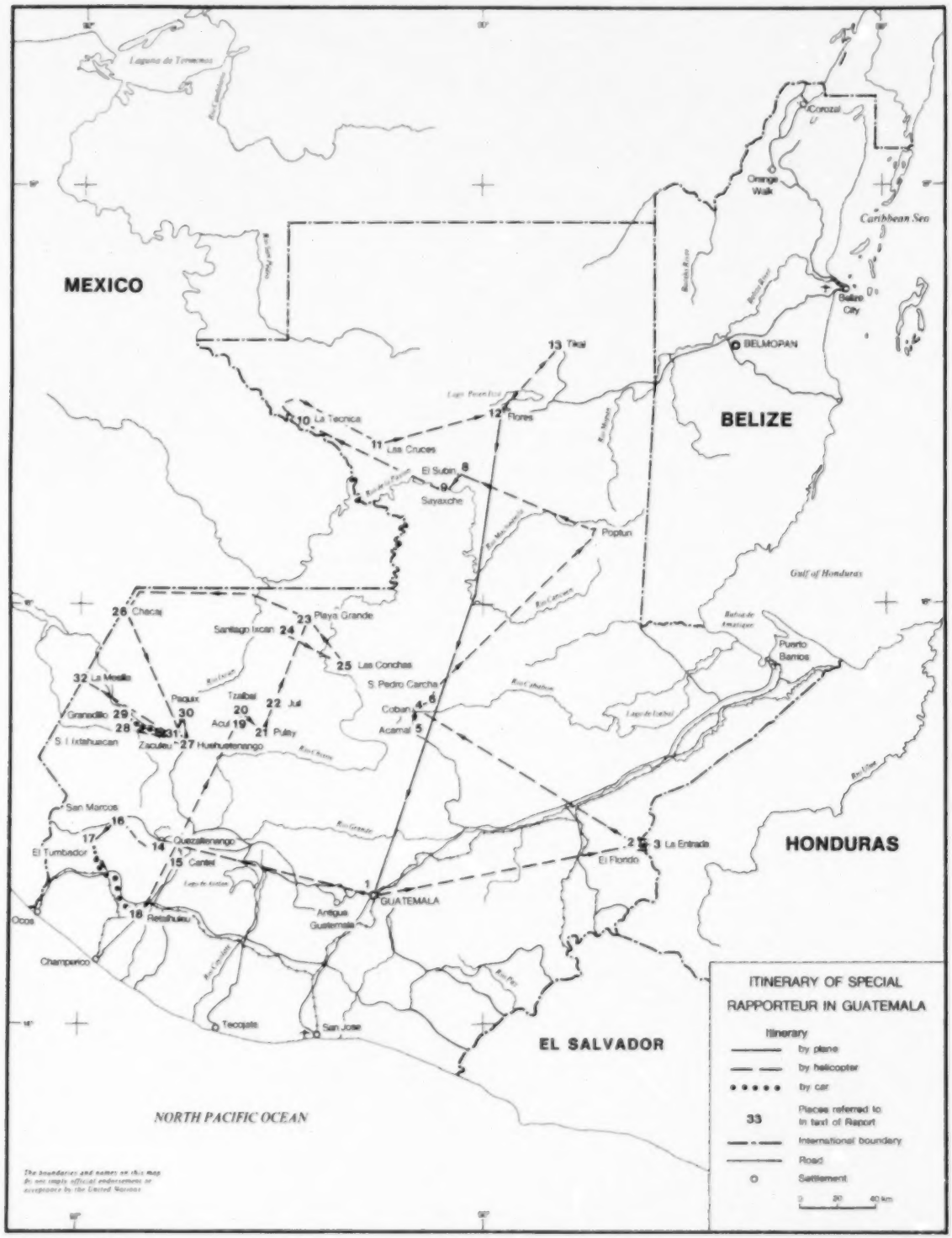
14. Requests the Commission on Human Rights to study carefully the report of the Special Rapporteur, as well as other information pertaining to the human rights situation in Guatemala, and to consider further steps for securing effective respect for human rights and fundamental freedoms for all in that country;

15. Decides to continue its examination of the situation of human rights and fundamental freedoms in Guatemala at its fortieth session.

101st plenary meeting
14 December 1984

Annex II

MAP OF THE ITINERARY OF THE SPECIAL RAPPORTEUR IN GUATEMALA



MAP NO. 3309 UNITED NATIONS
NOVEMBER 1984